

Appeal Decision

Hearing held on 30 November 2021 and 1 March 2022

Site visit made on 1 March 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

Appeal Ref: APP/M0655/W/21/3276261

Higher Oak Farm, Higher Lane, Lymm, Warrington WA13 0RG

- 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 K Robertson against the decision of Warrington Borough Council.
 - The application Ref 2020/38116, dated 10 November 2020, was refused by notice dated 19 April 2021.
 - The development proposed is a farm manager's dwelling (permanent).
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Decision

1. The appeal is allowed and outline planning permission is granted for a farm manager's dwelling (permanent), at Higher Oak Farm, Higher Lane, Lymm, Warrington WA13 0RG, in accordance with the terms of the application, Ref. 2020/38116, dated 10 November 2020 and subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for an award of costs has been made by Mr K Robertson against Warrington Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The hearing was initially opened on 30 November 2021. However, early in the proceedings it became apparent that the formal notifications of the hearing had not been served in accordance with the statutory timescales set out in the regulations¹. The hearing was therefore adjourned to allow the notifications to be served accordingly. The hearing was reconvened on 1 March 2022, where it was agreed by all parties that the notifications had been served in accordance with the statutory requirements².
4. Notwithstanding the description set out on the Council's formal decision notice, I have used the description of development as originally set out in the planning application form as this is what was originally applied for, and I have not been provided with any agreement to a revised description. At the hearing the main parties agreed that this was an accurate description of what is proposed.
5. The planning application was submitted in outline form with approval sought in relation to the matter of access. Matters of scale, layout, appearance and landscaping are reserved for future consideration. Accordingly, I have treated the indicative footprint and elevations plan³ as being for illustrative purposes only.

¹ The Town and Country Planning (Hearings Procedure)(England) Rules 2000 and the Procedural Guide: Planning Appeal England (updated 21 October 2021)

² Ibid.

³ Drawing No. AG(-0)02 Rev P0

Main Issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt; and,
- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including whether there is an essential need for a dwelling to accommodate a rural worker, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Background

7. Higher Oak Farm is located adjacent to the A56 along Higher Lane, to the immediate southeast of the built up area of Lymm and in open countryside designated as Green Belt. The farm is a free-range rare breeds poultry enterprise extending to 6.5 hectares of land laid out across two fields with a central access track leading off Higher Lane. The site contains a range of buildings including a large steel portal framed building, a temporary agricultural worker's dwelling, in the form of a mobile home, and a variety of movable poultry coops and attached runs which house the birds.
8. Planning permission was granted on appeal⁴ in June 2019 for a temporary agricultural worker's dwelling. That permission is subject to a planning condition which requires the temporary dwelling to be removed after a period of three years from the date of consent. This appeal seeks outline planning permission for a permanent agricultural worker's dwelling to support the rural enterprise and to replace the existing temporary dwelling.

Whether the proposal is inappropriate development

9. Policy CS5 of the Warrington Borough Council Local Plan Core Strategy (the Core Strategy) states that development proposals in the Green Belt will be approved where they accord with relevant national policy. I shall, therefore, consider the proposal against the relevant provisions of the National Planning Policy Framework (the Framework).
10. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Framework paragraph 149 confirms that the construction of new buildings should be regarded as inappropriate development in the Green Belt, subject to a limited number of specific exceptions.
11. The parties agree that the proposed dwelling would not fall within any of these exceptions and would therefore be inappropriate development in the Green Belt. I concur with that position and find that the proposal would be inappropriate development, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

⁴ Appeal Ref. APP/M0655/W/18/3209412

Effect on openness

12. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development and it has both spatial and visual aspects.
13. The Council has carried out a Green Belt Assessment⁵ to assess the contribution of the Borough's Green Belt to the five purposes of Green Belt set out in national policy. The assessment identifies the appeal site as part of a larger parcel of land on the southeast side of Lymm, where its contribution to Green Belt objectives is considered to be strong. Owing to its edge of settlement location, I too note the strong contribution that the site and its surroundings make to the openness of the Green Belt and the role it plays in safeguarding the countryside from the encroachment of built form.
14. At the present time there is no built development within the area where the proposed dwelling would be sited. It is currently an area of open agricultural land adjacent to a range of agricultural buildings of varying scale and design. While the site is partially screened from Higher Lane by a mature hedgerow and the existing large agricultural building, it is nevertheless visible in a number of private views from the rear of properties adjacent to the northwest and affords open views to the surrounding countryside. Therefore, I agree with the Council's assessment that the site and its surroundings make a significant contribution to the openness of the Green Belt, in both spatial and visual terms.
15. There are no details before me of the exact form that the proposed dwelling would take as the proposal has been submitted as an outline planning application, with matters of scale and appearance reserved at this stage. Nevertheless, it is clear that the introduction of any built form, together with the curtilage and domestic paraphernalia associated with a residential use, would result in a harmful loss of openness. The proposed dwelling would extend built development into an open area and would thereby encroach into the countryside. Therefore, the proposal would also fail to assist in safeguarding the countryside from encroachment, one of the five purposes of the Green Belt.
16. There were concerns that the proposal would assist in the merger of settlements, in particular the merger of Lymm with the nearby village of Agden. However, as the proposal is for a single dwelling this would not result in the merger of settlements and so would not conflict with the related Green Belt purpose.
17. Overall, in these regards, the parties acknowledge that the proposal would harmfully reduce the openness of the Green Belt. For the reasons I have set out, I would agree, and I also find that the proposal would represent a harmful encroachment of development into the countryside, conflicting with associated Green Belt purpose. The proposal would therefore be contrary to the fundamental aim of Green Belt policy, as set out above.

Other considerations

18. The proposal constitutes inappropriate development in the Green Belt. I have also found that it would harmfully reduce the openness of the Green Belt, harm which carries substantial weight. The Framework is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly

⁵ Warrington Borough Council Green Belt Assessment Final Report, by ARUP dated 21 October 2016

outweighed by other considerations. I turn now to address those other considerations.

Need for a rural worker's dwelling

19. The essential need to accommodate a rural worker on the site was established by the previous appeal and at the hearing I was informed of how the rural enterprise has expanded since that appeal was allowed. Indeed, the Council accepts that an essential need exists for a dwelling to accommodate a rural worker on site.
20. The poultry enterprise comprises a flock of laying and breeding hens of varying rare breeds and operating on a free-range basis with birds housed in a number of small coops that are moved around the land to rotate their area of pasture. Stock number have increased substantially since the previous appeal with the laying flock up from 60 to 500 birds and the breeding flock having been increased from an initial 60 birds to three flocks of 400, 300 and 200 birds at differing stages of development. In addition, approximately 1,000 hatching eggs are currently held in incubator units as part of the breeding programme, with over 500 chicks under specialist brooding lamps.
21. There is no dispute that the operations of the rural enterprise involve exceptionally high levels of animal husbandry. This includes frequent monitoring of stock to maintain constant temperature and humidity levels, particularly in relation to hatching eggs and young chicks. These checks are required at all times of the day and throughout the night. I heard that slight changes of temperature and/or humidity levels can result in significant losses of stock. This can happen occasionally as the result of a loss of power or more frequently due to equipment malfunction, where a heat lamp will fail or water tubes as part of the humidity system become blocked. I acknowledge that such incidents can be fatal within a matter of a few minutes without regular monitoring and attendance at short notice.
22. Furthermore, I heard how an onsite presence is also required to deter predation from foxes and other wild animals that can break into the coops and attack the birds. Even if the coops were made more secure, I heard how the mere presence of a predator close to the coops or attempting to break into a coop can stress the birds, leading to smothering events where the birds mass together on top of each other, resulting in death from crushing or suffocation. This risk is currently mitigated by the fulltime onsite presence of the Farm Manager and their dog, who can scare off predators. Indeed, I was told how the dog will often bark to alert the Farm Manager that predators are nearby, therefore alerting them to the need to check the coops.
23. Given the dispersed layout of the site, as a result of its free-range business model, with birds housed in a number of relatively small coops that are regularly rotated around the land, I can see that it would not be practical to install remote monitoring systems or CCTV facilities. I also accept that the business is not of a sufficient commercial scale to support a 24-hour pattern of shift working via the provision of additional staff. There could be some scope for the provision of generators to automatically provide power in the event of a power failure. However, this would not overcome the need for the regular monitoring and maintenance of equipment to ensure the correct levels of temperature and humidity are maintained. Nor would these solutions be an effective deterrent for predators.

24. The evidence in relation to alternative accommodation in the locality is limited. I was advised by interested parties that there have been a number of properties for sale in recent years within a short walk of the appeal site and which could therefore provide an alternative to the proposal. Alternative accommodation has been dismissed on the basis that it would not be within sight or sound of the poultry farm, which the appellant considers necessary to meet the functional needs of the enterprise. For the reasons I have set out above, I too agree that the high levels of husbandry associated with the operations of the rural enterprise, including the requirement for attendance at very short notice, at all hours of the day and into the evening, demonstrates the need for a rural worker to be permanently accommodated onsite.
25. The financial accounts submitted with the appeal show that the rural enterprise is making a healthy annual surplus and that this is sufficient to make the required investment to fund the construction of a dwelling to accommodate a rural worker. Indeed, the financial evidence suggests a significant growth in the business since the consideration of the last appeal. Accordingly, the rural enterprise is a financially viable and profitable business and, therefore, I am satisfied that the long-term prospects of the business are financially sound. I also note that this is a matter of common ground between the parties.
26. To conclude on this issue, I am satisfied that the evidence presented in this case has demonstrated an essential need for a dwelling to accommodate a rural worker to meet the functional requirements of the rural enterprise. There are potential risks to animal welfare and the proper functioning of the rural enterprise in the absence of a rural worker being permanently accommodated onsite. Furthermore, the proposal would contribute to the Framework's aim of supporting a prosperous rural economy.

Other matters

27. My attention has been drawn to the presence of a shepherd's hut which is being used by the appellant as a retail unit from which to sell produce and other food items. It is alleged that this is unauthorised and therefore amounts to a breach of planning control. However, I am advised that the income generated from this unit has been discounted from the financial information which supports this appeal. Accordingly, this has no direct bearing on the outcome of this appeal and the lawfulness or otherwise of the shepherd's hut is not a matter for my consideration.
28. At the hearing there was a great deal of discussion over the scale of the proposed dwelling, as shown in the indicative plan. The Council and interested parties were concerned that the proposed scale and footprint was far in excess of what was required to serve the needs of the rural enterprise. I also heard that the dwelling would be substantially greater than the average size of a new build dwelling in the UK. Nevertheless, the matter of scale is reserved for future consideration, and the Council confirmed that this matter was not called in for consideration by the authority in accordance with the relevant procedure⁶. Consequently, this matter is beyond the scope of this appeal. Therefore, the accompanying footprint and elevation plan must be considered as indicative only and it does not bind the appellant in making a subsequent application at the reserved matters stage.
29. That said, I acknowledge that the scale of the dwelling illustrated in the indicative plan appears to be excessively large. However, I have no doubt that, at the

⁶ Part 3 5(2) of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)

reserved matters stage, the Council could secure a dwelling of a suitable scale appropriate to its Green Belt location, and that would provide a modest family home of a size that would be commensurate with the essential needs of the rural enterprise.

30. Interested parties have raised concerns in relation to drainage, trees and the presence of strategic pipelines which carry combustible materials under the site. Nevertheless, I am advised that the site is within Flood Zone 1, with the lowest risk of flooding, and no concerns have been raised from the Lead Local Flood Authority. The Health and Safety Executive has raised no concerns regarding the pipelines. The redline boundary of the application site would appear to be sufficiently generous as to enable a dwelling to be located without any adverse impact on the root protection zones of the nearby trees and hedgerow. Ultimately, I have no compelling evidence before me to lead me to a different view in these regards.

Green Belt Balance

31. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Moreover, very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, there would also be adverse impacts on openness and the Green Belt purpose of safeguarding the countryside from encroachment would be undermined. These harms attract substantial weight.
32. While the Council does not dispute the essential need for a rural worker's dwelling to support the appellant's rural enterprise, it is of the view that this essential need does not amount to the very special circumstances necessary to justify the proposal. However, it is here where my view departs from that of the Council's.
33. It has been robustly demonstrated that animal welfare would be significantly compromised in the absence of a rural worker being permanently accommodated onsite. This, in turn, would jeopardise the viability and future success of the rural enterprise. Accordingly, a compelling case has been made for a rural worker's dwelling at this location and the identified essential need for such a dwelling is a material consideration to which I give very substantial weight.
34. Therefore, I find that this other consideration is of sufficient weight to clearly outweigh the harm I have identified. Consequently, I consider that very special circumstances exist to justify inappropriate development in the Green Belt. On this basis, the proposal would accord with Policy CS5 of the Core Strategy and the associated policies of the Framework, whose principal objective is to protect the Green Belt from inappropriate development, except where very special circumstances are demonstrated.

Conditions

35. The Framework sets out that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested list of conditions on this basis and made some minor amendments where necessary to meet those tests.
36. Conditions relating to the submission and timing of applications for the reserved matters, and the associated timescales for the commencement of development

are necessary in the interests of certainty. For similar reasons, I have also imposed a condition specifying the approved plans and drawings.

37. The Council seeks to specify the indicative footprint and elevations plan as an approved drawing. However, as scale is a reserved matter, this would be unreasonable. Arbitrarily imposing a condition relating to a reserved matter would unnecessarily fetter the flexibility of an outline planning permission, the purpose of which is to provide a decision on the principle of development. Instead, this matter should be properly considered at the reserved matters stage.
38. It is reasonable to expect an application for the reserved matter of scale to illustrate the proposed finished floor levels in relation to the adjacent land. It is therefore not necessary to explicitly require this by condition. Thus, I have not done so.
39. An agricultural occupancy condition is necessary to restrict the future occupancy of the dwelling because the very special circumstances that have been demonstrated to justify the proposal are based on the essential need generated by the operations of the current rural enterprise. However, a condition to require the removal of the dwelling in the event that the essential need was to fall away is neither necessary nor reasonable because this would necessitate a further act of development. Consequently, I have not imposed this condition.
40. Finally, the Framework advises that conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. In this case, the permitted development rights associated with a dwelling could introduce extensions and other forms of development that could go beyond those which are considered not inappropriate in the Green Belt and would be capable of having a material effect on openness. Therefore, I find the removal of specific permitted development rights to be justified in this instance. I have therefore included such a condition and revised the wording suggested by the Council to reflect this.

Conclusion

41. The proposal would accord with the development plan and the associated policies of the Framework. There are no material considerations that would indicate that the appeal should be determined other than in accordance with the development plan.
42. Accordingly, I conclude that, subject to the conditions set out in the attached schedule, the appeal should be allowed.

J M Tweddle

INSPECTOR

Schedule of Conditions

- 1) Details of the 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 be carried out in accordance with the following approved plans: Location Plan (Drawing No. 19017 AE(-0)01 Rev P0) and Site Plan – Proposed (Drawing No. 19017 AG(-0)01 Rev P0).
- 5) The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed or last employed in the agricultural business occupying the land edged in blue on the approved Location Plan (Drawing No. 19017 AE(-0)01 Rev P0), known as Higher Oak Farm, or a widow, or widower or surviving civil partner of such a person, and to any resident dependants.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any order revoking and/or re-enacting that order with or without modification, there shall be no extensions or enlargements of the dwelling and no garages, outbuildings, areas of hardstanding, walls, fences, gates or other structures shall be erected other than those expressly authorised by this permission.

APPEARANCES

FOR THE APPELLANT:

Mr Ben Kettle <i>BSc(Hons) MSc MDC MRTPI</i>	Warfe Rural Planning
Mr Kirk Robertson	Appellant
Miss Amelia Robertson	Farm Manager

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mike Davies <i>MRTPI</i>	Warrington Borough Council
Miss Pauline Shearer <i>MRTPI</i>	Warrington Borough Council

INTERESTED PARTIES:

Mr Vincent Briers	Local Resident
Mr Richard Cowley	Local Resident
Mrs Angela Crowe <i>MRTPI</i>	Local Resident
Mrs Julie Fowler	Local Resident
Mr Graham Simmons	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

Appellant's application for an award of costs