Appeal Decision

Hearing held on 26 October 2022

Site visit made on 26 October 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal Ref: APP/U1430/W/21/3281371
Brede Valley Farm, Frymans Lane, Brede, Rye TN31 6HA

- 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 Mrs C Carley, Brede Valley Farm Ltd, against the decision of Rother District Council.
- The application Ref RR/2021/234/P, dated 2 February 2021, was refused by notice dated 30 July 2021.
- The development proposed is the erection of agricultural dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing it was agreed that the address given on the appeal form and description of development provided on the decision notice are the most accurate and are reflected in the heading above.

3. Prior to the hearing, the Council provided new evidence relating to viability. At the hearing, the appellant sought to submit more recent, and projected, profit and loss accounts. I consider that all of this is pertinent to my determination of the appeal. Having first given the main parties the opportunity to address this evidence, I am satisfied that no-one has been prejudiced by me accepting it.

Main Issues

4. The main issues are:

   - Whether there is an essential need for a dwelling to accommodate a rural worker, having regard to the financial soundness of the enterprise; and

   - The effect of the proposed development on the character and appearance of the area, having regard to the landscape and scenic beauty and dark night sky of the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

Essential Need

5. Brede Valley Farm is a livestock enterprise producing beef cattle and pigs for meat on a year-round basis, and turkeys for meat on a seasonal basis. The

appeal site is located in the countryside where the creation of new dwellings is restricted to extremely limited circumstances. It is agreed that there is a necessity to provide accommodation for a rural worker to be present on the holding and there is no other existing accommodation in the local area.

6. There was debate at the hearing in relation to the need to demonstrate the financial soundness of the enterprise and the financial test developed by Ministry of Agriculture, Fisheries and Food, known as LU1893. My attention has been drawn to legal judgements and appeal cases relating to this matter[1]. These are relevant to the appeal before me as they relate to similar developments. However, the enterprises involved and local planning policies are not directly comparable.

7. Paragraph 80a) of the National Planning Policy Framework (the Framework) sets out that decisions should avoid the development of isolated homes in the countryside unless 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. Policy RA3 of the Rother Local Plan Core Strategy (2014) (CS) requires, amongst other things, that new dwellings to support farming should demonstrate the unit and the agricultural activity concerned are financially sound and have a clear prospect of remaining so.

8. The policy's supporting text suggests that the agricultural unit and activity should normally be established for at least three years, have been profitable for at least one of them. Whilst there is no absolute requirement for this in the policy wording itself, it is logical to ensure that the enterprise will be able to cover the salary of the worker who would occupy the dwelling. Moreover, an examination of the enterprise's finances is necessary to provide confidence that the enterprise will remain viable for the foreseeable future, in accordance with Planning Practice Guidance (PPG)[2].

9. To my mind, having regard to Policy RA3 and the PPG, it is reasonable to include a financial element when assessing the proposed development. This is to ensure that there is confidence that the enterprise is not likely to cease which would leave behind a new dwelling that would not have otherwise been approved in this location.

10. The enterprise has been in operation in excess of 8 years and is currently debt and mortgage free. The appellant has invested in the business, including through erecting three barns, access road and agricultural vehicles. There is also a caravan on site which is used as refuge for staff/operatives when necessary to watch over imminent calving or arrival of pig litters. The appellant's construction business, and other business interests, have assisted financially in the investments relating to the enterprise, rather than the enterprise being able to finance itself.

11. The profit and loss accounts show that prior to the year-end April 2022 the enterprise was making either a small profit or loss. The year-end April 2022 accounts show that the enterprise was making a greater profit and it is also forecasted to make a similar profit for the year-end April 2023.

[1] Including Jarmain v SSETR & Welwyn Hatfield DC [2000] EWCA Civ 126; [2000] JPL 1063, APP/L3625/A/14/2220464 and APP/E2734/W/19/3232005
[2] Paragraph: 010 Reference ID: 67-010-20190722

12. The evidence before me sets out the cost of constructing the dwelling and infrastructure costs. It also indicates the living wage and the typical salary for a full-time farm worker (according to the John Nix Farm Management Pocketbook (2022)). In relation to this matter, it was evident at the hearing that the salary for the worker had not been decided. The dwelling would be off-grid and the accommodation would be free of charge which would be reflected in the salary.

13. The appellant confirmed at the hearing that their intention is to finance the new dwelling privately, through their construction company. They highlighted since the COVID-19 pandemic the enterprise has been able to grow, including through renting more land. In addition, they consider the turkey element of the business, and the agricultural workers dwelling would also enable the enterprise to grow further.

14. The Council highlights that the profit and loss accounts are not complete and do not show allowances for labour in some of the years and only a small amount in the latter years. In addition, they do not show allowances for depreciation or accountancy costs. They consider that the profits are insufficient to provide a reasonable return to land, labour and in the investment in the buildings. Furthermore, they do not reflect the recently acquired rented land that has been taken on.

15. I recognise that the COVID-19 pandemic has had some impact on the enterprise as a consequence of restaurants being shut. However, that does not explain the small profits and losses prior to the pandemic. The enterprise has predominantly not made a profit which would cover the salary of the worker. In essence, the enterprise has only in the last financial year made a profit which would cover the salary of the worker. The enterprise is projected to make a similar profit for the year end April 2023, but that forecast is not supported by robust evidence.

16. In my view, I do not find it unreasonable for the appellant to finance the new dwelling through a different company. However, the enterprise has been heavily reliant on the appellant's other business and will also be reliant on it to construct the new dwelling. This indicates that the enterprise is not self-sustaining. The profitability of the enterprise has not reliably been at a constant level to support the proposed development, and enterprise. Therefore, there is not currently on-going profitability which would be able to support a worker living on site and their wage levels.

17. For these reasons, due to the financial variabilities of the enterprise there is not a clear prospect of the enterprise remaining financially sound. Consequently, the proposed development would conflict with Policy RA3 of the CS and Paragraph 80 of the Framework.

Character and appearance

18. The appeal site is accessed from Frymans Lane. It comprises a sloped field that sits lower than Frymans Lane. The site is located within the AONB which is characterised by large open fields (bounded by mature trees and hedgerows), areas of woodland interspersed with sporadic development.

19. Paragraph 176 of the Framework establishes that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.

20. The proposed building would be built into the natural slope of the land and would incorporate a grass roof. The dwelling would be of an appropriate size, siting and design. The building would not be dominant from public vantage points due to the topography of the area, siting of the existing barns and mature trees and hedgerows bounding nearby fields.

21. In contrast to the existing farm buildings, the dwelling would be domestic in appearance. The proposal would protrude into an open field which would reduce the rural and open character of the landscape. Although the dwelling would incorporate a green roof and limited private amenity space, the scheme would have an urbanising effect through introducing a domestic building with associated parking area and parked cars. Consequently, the proposed development would cause harm to the character and appearance of the area, having regard to the landscape and scenic beauty of the AONB. The proposal would not conserve or enhance the landscape and scenic beauty of the AONB. The harm would be limited as the proposed development would not be conspicuous from the surrounding area.

22. Paragraph 185 of the Framework states planning decisions should also ensure that new development is appropriate for its location and should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation. The appellant explained at the hearing that lights are on all night in the existing barns due to security, as well as for calving and farrowing. The barns contain clear roof panels. The appellant asserts that the proposal would improve light pollution with supervision. The dwelling has been designed with south facing windows and a canopy with windows inset to reduce its light impact.

23. Whilst it may be the case that the lights in the barn could be on less with supervision there are no means to ensure that this would be the case. Ultimately, the proposed dwelling would introduce a new source of illumination during the hours of darkness. In particular, the first-floor south elevation would contain large amounts of glazing. The proposal therefore would have a detrimental effect on the dark night sky.

24. The appellant considers that the proposal would comply with paragraph 80e) of the Framework. It is intended that the dwelling would be self-sufficient in terms of the provision of power for heating and lighting. The dwelling responds to the context of the site and is simply designed with a grass roof. It would incorporate high levels of insulation, water saving devices as well as an air source pump and solar photovoltaics.

25. Although the design and the sustainable measures are commendable, the proposal would not introduce any novel features or concepts. I am not persuaded that the design is of exceptional quality that is truly outstanding or would significantly enhance its immediate setting.

26. For these reasons, the proposed development would conflict with Policies OSS3, OSS4, RA2, RA3 and EN1 of the CS and Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan (2019). These seek, amongst other matters, to ensure development within the AONB conserve and seek to enhance its landscape and scenic beauty, as well as conserving the intrinsic value of the rural character of the countryside and maintaining dark night skies. It would also conflict with paragraphs 174, 176 and 185 of the

Framework which seek to protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside.

Other Matters

27. I have considered the support comments and other matters raised by the appellant. In addition to matters relating to the main issues, they highlight that it is vital that rural businesses are supported in ways that benefit the wider community and economy, thefts and criminal damage at the appeal site, there have been casualties and loss of life due to the lack of on-site presence. The appellant also sets out reasons why a temporary mobile home accommodation would not be appropriate and have highlighted parts of the Framework that the proposal complies with. The other matters raised, and benefits of the proposal, do not outweigh the harm identified above.

28. Both main parties submitted separate draft planning obligations limiting the occupancy of the agricultural dwelling and ensuring that the agricultural dwelling and land and buildings are not separated. It was confirmed at the hearing that there had been no progress on a final draft planning obligation. The appellant suggested at the hearing that a planning obligation adds weight to support their case. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Even if I had been provided with a completed s106 agreement that would not have impacted my conclusions on the main issues.

29. There is disagreement between the main parties relating to whether the development should be liable to CIL. Given my findings in relation to the main issues, I have not considered this matter further as it would not be determinative to my decision.

Conclusion

30. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Pollington	Larkins & Pollington Design
Mr Patrick Griffin	Rural Planning Group
Mr Wayne Carley (Brede Valley Farm Ltd)	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Edwin Corke	Senior Planning Officer, Rother District Council
Mr Peter Williams	Reading Agricultural Consultants

Appeal Hearing Documents

From the Appellant:

1. Trading and Profit and Loss Account for the year ended 5 April 2022
2. Trading and Profit and Loss Account for the year ended 5 April 2023

From the Local Planning Authority:

3. Planning obligation compliance with CIL tests