The Planning Inspectorate

Appeal Decision

Hearing (Virtual) held on 29 June 2022

Site visit made on 30 June 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/Y9507/W/21/3275512
Broadlands Meadow Farm, Town Lane, Sheet, Petersfield, GU32 2AF

- 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 L. Milton against the decision of South Downs National Park Authority.
- The application Ref: SDNP/19/05824/FUL, dated 4 December 2019, was refused by notice dated 10 December 2020.
- The development proposed is a rural workers dwelling and farm track.

Decision

1. The appeal is allowed and planning permission is granted for a rural workers dwelling and farm track at Broadlands Meadow Farm, Town Lane, Sheet, Petersfield, GU32 2AF in accordance with the terms of the application, Ref: SDNP/19/05824/FUL, dated 4 December 2019, subject to the schedule of conditions to this decision.

Application for costs

2. A written application for costs was made by Mr & Mrs L. Milton against the South Downs National Park Authority. This application is the subject of a separate decision.

Preliminary Matters

3. I have amended the description of the development from that provided on the application form by omitting the words 'retention of' from the description of development as those matters are not an act of development. In any event, the farm track was in place at the time of my site visit.

4. The appellant submitted additional evidence comprising several items including accounts for the financial year to 31 July 2021, a number of letters and invoices, land registry extract and prior approval application and decision notice. These were submitted by the appellant outside of the timeframe for the submission of evidence. However, for a variety of reasons, these documents could not have been provided in a more timely manner. The accounts provide evidence regarding the ongoing financial position of the enterprise and were submitted as evidence shortly after their issue by the appellant's accountants. The letters and invoices provide a picture of the continuation of income streams associated with the business. The purchase of land at Nyewood had been completed in the intervening period and prior approval matters were also recently concluded. Whilst not forming part of the original application, their content is important in providing evidence as to the main issue in dispute,

namely the financial viability of the agricultural enterprise. The Council were provided with an opportunity to comment on the additional evidence and submitted a response in rebuttal. Therefore, I am satisfied that no individual would be prejudiced by my consideration of these items.

5. A revised version of the National Planning Policy Framework (the Framework) was published on the 20 July 2021 following the Council's determination of the application. The Council's decision notice refers to paragraph 79a, however this has been renumbered as paragraph 80a of the revised Framework. The wording of revised paragraph 80a is unaltered from paragraph 79a that it replaces.

Main Issue

6. The main issue is whether there is an essential need for a dwelling to accommodate a rural worker with particular regard to the viability of the rural enterprise.

Reasons

7. Broadlands Meadow Farm occupies a semi-rural location outside of any settlement boundary and within the South Downs National Park. It comprises an agricultural field set out with several fenced enclosures, together with two agricultural barns and a studio used in association with the agricultural use. There is an existing access from Town Lane. A temporary planning permission[1] was granted in 2017 (the "temporary permission") for the siting of a temporary rural workers dwelling and an agricultural track. Whilst these were in situ at the time of my visit, this permission has now expired.

8. By reason of the appeal site's location outside of any settlement policy boundary and for the purposes of applying planning policy, the appeal site is considered to be located within the countryside. Policy SD25 of the South Downs National Park Local Plan 2014-2033 (July 2019)(LP) seeks to direct new housing in accordance with a strategy based on settlement boundaries unless under certain circumstances which comply with relevant policies within the LP including where there is an essential need for a countryside location.

9. LP Policy SD32 is specifically concerned with agricultural workers' dwellings. This type of development is supported where it is demonstrated that the nature and demand of the work concerned make it essential for one or more people engaged in agricultural enterprises to live at, or very close to, the site of their work. It defines a set of conditions that must be met. It must be shown that, a) that the agricultural enterprise is established, extensive, viable and contributes to the special qualities of the National Park; b) there is an essential functional need for the agricultural dwelling that could not be fulfilled by another residential dwelling on the enterprise or within the local area; c) no other residential dwellings have been sold off separately or alienated from the site; d) that no other building within the site is capable of conversion; e) the agricultural dwelling would be well-related in terms of its siting to existing buildings within the enterprise, remain as a total habitable floor space not exceeding 120 square metres and be sensitively designed.

10. These policies are consistent with paragraph 80 of the Framework insofar as it seeks to avoid isolated homes in the countryside unless in accordance with

[1] SDNP/17/02596/FUL

certain circumstances including where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

11. The Council accept that paragraphs b), c), d) and e) are satisfied by the proposed development and I see no reason to take a different view. Whilst there is no dispute that the enterprise is established, extensive and would not undermine the special qualities of the National Park, it is the Council's case that the enterprise has not shown it to be a viable business for the purposes of paragraph (a). This leaves viability as the main issue to be determined as part of this appeal.

12. In terms of assessing the viability of an enterprise, LP Policy SD32 does not specify any methodology or steps that should be undertaken. However, the supporting text at paragraph 7.100 states that '*applicants should provide suitable information which clearly sets out the economic viability of the enterprise'*. No other local or national planning policy or guidance that determines the methodology for the assessment of the viability of the agricultural enterprise has been brought to my attention.

13. The parties make reference to Annex A to Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7), which sets out the functional and financial tests for permanent and temporary dwellings. However, the criteria set out in Annex A of PPS7 no longer has any status as national planning policy. It is open to a Council when preparing their Local Plan to decide on any detailed policy criteria it considers appropriate to apply to such proposals. Whilst the parties suggest that the criteria of Annex A underpins their assessment of applications for rural workers' dwellings, this criteria has not been formally adopted as part of the Council's Local Plan.

14. The test under paragraph 80 a) of the Framework is different from that under Annex A of PPS7, in that it simply requires a judgement of whether the proposed agricultural enterprise has an essential need for a worker to live there or not. However, there is no indication that in making that judgement, the decision-maker does not need to take account of matters which were previously included within PPS7 Annex A. The matters at issue here concern the exercise of that judgement.

15. The enterprise was established by the appellants in 2011 with the purchase of 2.2 hectares of land. In addition, further parcels of pasture land of some 3.5 hectares in size were rented. Since then, additional land has been rented and purchased resulting in the agricultural unit extending to some 47 hectares. In granting the temporary permission for a rural workers dwelling in 2017, the Council accepted that the enterprise had demonstrated an 'essential functional need' for a person to be present on-site at most, if not all times and at short notice. The identified functional need was stated to arise as a consequence of the care requirements of the alpaca livestock, with particular regard to birthing and mating. This functional need continues to exist and is applicable to the appeal case before me.

16. In the application for temporary permission, the appellants' submitted business plan provided indicative levels of profit over a three year period. The forecasted net profits as specified within the appellant's agricultural appraisal report dated December 2016 (the 2016 appraisal), were stated to be an initial loss in year 1, with improving profits in year 2 and 3 of approximately £29,083 and £ 36,226, respectively. The Council were not entirely content that those levels

of profit were achievable, noting that having allowed for a lower gross margin ad extra labour this would result in a total return in Year 2 of circa £19,000 and £26,000 in Year 3. Based on those figures, the Council were of the opinion that 'to achieve this level of profitability is not beyond the realms of possibility'. I accept the appellants' point that in granting the temporary permission based upon the stated anticipated levels of profits, the Council were satisfied these figures would be indicative of a financially viable business.

17. An updated agricultural appraisal dated December 2019 (the 2019 appraisal) sets out recorded profits for the enterprise over the three year period. These show the enterprise incurred a larger loss than anticipated in 2017, a further loss in 2018, albeit modest in value, and subsequently a larger than predicted profit in the region of £67955 in 2019.

18. The enterprise derives income from several sources including from the sale of livestock, raw and processed fleece and fibre, wool garments manufactured from mixed alpaca/angora fibre and wool and animal by-products. The enterprise also provides and is remunerated for educational and therapy care sessions for disadvantaged and vulnerable adults and children. Additional revenue is attributable to veterinary services and haymaking. With the exception of hay making, all of the aforementioned income streams are generated at the appeal site.

19. It is the Council's case that only income directly attributable to the identified functional need should be included in consideration of the profitability of the business. However, in determining the application for the temporary permission, the Council were content to include income streams, including hay-making and faecal egg count services, which did not directly arise as a result of the functional need when it considered the financial position of the enterprise.

20. On the evidence before me, it appears that the Council accepted that livestock sales were key to their assessment of viability but that it also recognised that other income streams were important and could contribute to maintaining the rural enterprise. Importantly, the Council's consultant noted "the added income streams and garments, it is likely it will be viable at the end of the 3 year period". In the absence of any clear justification, I am not satisfied that certain income streams which were previously deemed suitable for inclusion within the Council's assessment of future viability when assessing the viability of the business in 2016 should now be excluded in their entirety. It may be appropriate to exclude non-functional income in some instances where such income is a main contributor to the overall profitability of an agricultural business, but such a decision is subject to the planning judgment of the decision-maker and in the appeal case before me, I take the view that it is not necessary to exclude it for the reason given above.

21. In any event, in terms of the income attributable to the therapeutic care sessions, I heard from an interested party that the enterprise was *'not simply a petting zoo'* and the appellant explained that those individuals were undertaking everyday tasks to provide care for the livestock. Their involvement was not simply observational. I therefore consider that income generated in this manner contributes to the identified functional need of the livestock and I am not satisfied that income derived in this manner should be excluded.

22. The faecal egg count service/veterinary service is not directly attributable to the functional need of the livestock. However, the appellant explained that due

to the increasing herd size and consequent pressure to look after the animals, this income is in decline and accounts for only a small part of the overall income of the business.

23. It is also put to me that income from hay making should not be included. I disagree. Whilst I note that hay is grown at other land within the appellants ownership, Nyewood, it is primarily grown to provide winter feed for the livestock for which there exists an identified functional need. As a consequence, financial outgoings from the purchase of animal feed is reduced. Any surplus hay is subsequently sold on the open market. However, the quantity available for sale is subject to the feeding needs of the livestock and therefore, any surplus amount is variable and likely to reduce as animals reach maturity and the size of the herd increases. In any event, the Council's suggested reduction of approximately £5419 for income not attributable to the functional need, is a modest proportion of the profitability of the enterprise.

24. In reaching the above view, I have had regard to the Council's concerns regarding the size of the herd and the discrepancies between the projected and actual growth of the enterprise. I note the Council's concerns regarding the lower than predicted number of breeding stock which has in turn led to a lower actual sales figure. Rather than having increased 'significantly' by year 4 (2020) in line with the forecast, the total number of livestock was noted to have declined during the 2018-2019 period by four head overall. This included a decrease of ten breeding age alpacas.

25. However, the appellant explained that this was partly due to an outbreak of mycoplasma illness that resulted in the loss of some 14 adult females and their offspring during 2019. The appellant also clarified that a temporary cessation of the breeding programme was due to the appellant's fear of having to cease the business, find new homes for the herd and partly due to the uncertainty of the Covid-19 pandemic which placed considerable restriction on in-person sales of livestock.

26. Furthermore, by the time of the hearing, the appellant advised that the rural enterprise was comprised of some 22 male and 37 female alpacas. Of these, some 15 alpacas were confirmed to be pregnant and a further 7 alpacas were a possibility. In addition, the rural enterprise currently has a number of other animals including approximately 35 Boreray sheep, 12 North Ronaldsay sheep, 26 Clun Forest sheep and 47 goats. The appellant also breeds a small number of other rare animal breeds as a long-term benefit to the longevity of those species rather than as a source of any income.

27. In my view, the appellant's explanation regarding lower than anticipated number of breeding alpaca stock was credible. Importantly, the current levels of livestock, which concurred with my observations at the site visit, show that the herd has increased in size more recently thus more closely aligned with the predicted stock levels set out within the 2016 appraisal. On the basis of the anticipated number of unborn Cria, I take the view that levels of stock will continue to increase and I do not share the Council's view that the herd has reached its optimum size.

28. Turning to issues regarding the valuation of stock, whilst the business accounts have included a valuation figure for livestock, in the past, this has been deduced by the appellant based upon prices quoted for similar types of stock

by *Alpaca Seller,* which is an established industry based guide. The appellant advised that these estimations were made upon a conservative basis.

29. Subsequently, the appellant has provided a Stock Valuation Report (SVR) dated 18 February 2021. The assessment was undertaken upon physical observations of the condition of the female alpaca stock. Individual valuations have been provided together with a total female herd value which is stated to have a current market retail value in the region of £87,550, which differs from the estimated valuation figures of the appellant. Whilst the Council are concerned that a professional valuation in the form of a Red Book Valuation has not been provided, the SVR was undertaken by an expert with 25 years of alpaca farming and breeding experience including exportation and domestic sales of alpaca breeding stock.

30. The Council have provided no evidence to contradict the SVR valuation and to my mind, the SVR provides credible and convincing evidence regarding the value of female alpaca stock. Importantly, it provides adequate justification regarding the increased valuation of stock and it substantiates the view that net profits in earlier years were underestimated. I also heard from the appellant's accountant that the livestock figures included within the accounts had been treated in accordance with financial accounting principles and tying all of these matters together, I consider that the evidence provided by the appellant is suitable information that goes towards the economic viability of the enterprise as required by LP Policy SD32.

31. Therefore, in terms of the overall profitability of the enterprise, whilst the Council have suggested that the quoted profit for 2019 should be reduced by excluding income that is not attributable to the functional need (approximately £5419) and the increase in valuation of breeding females (£9000, approximately), for the reasons given, and in the absence of any policy basis or law, with regards to the appeal scheme before me, I consider that this is not the correct approach. Thus, for the purposes of assessing viability, I shall use the 2019 quoted profit figure of £67,955.

32. However, I accept that viability should not be assessed solely on net profits. For a business to be viable it must be able to generate sufficient monies to provide a reasonable return on the capital invested in the business and to fund the proposed development. There is dispute between the parties regarding both of these matters.

33. In terms of funding the proposed development, no independent assessment of the build cost of the dwelling has been provided. The appellant expects the development to cost in the region of £100,000 whereas the Council assumes a figure of £225,000. Albeit the proposed development would be modest in size and the appellant intends to self-manage the construction project to keep costs low, in the absence of any clear and compelling evidence, I cannot be satisfied that the build cost will be the sum predicted by the appellant. I expect the true figure will lie somewhere between these stated sums.

34. With regards to a reasonable return for the capital invested in the business in 2019, the Council stipulate that the business would require a profit in the region of £54,242, whereas the appellant states a figure of almost £28,000. However, I note that in reaching its view, a number of the Council's calculations had been made on the basis of useable floor area of 150 square

metres rather than 120 square metres of the proposed dwelling. Thus, some of the values included within their assessment have been over estimated.

35. Nevertheless, even if I were minded to accept the Council's position including the higher level of build costs and that a profit in the region of £54,000 was required in order to demonstrate a reasonable return for the capital invested in the business, this needs to be set against the business making a net profit just short of £68,000. To my mind, whilst the enterprise was operating at a loss in 2017 and 2018 and provided little financial return, this position has significantly improved in 2019 such that the enterprise has produced adequate profits to provide a reasonable return on invested capital.

36. Reference has been made to 'average profits' of the enterprise. However, no reference to this within planning policy or legislation has been brought to my attention to demonstrate that this is an appropriate approach to assessing viability, albeit there is some reference to it within the caselaw of Jarmain[2]. An average approach would be based on the early years of a trial period where a business was being grown and developed in order to establish its viability at the end of the trial period. In my view, it is not unusual for an enterprise to show little or no profitability in those early years. An average approach provides limited information regarding the prospects of the business going forwards and is likely to distort the position thus leading to a business being regarded as unviable. Furthermore, I take into consideration that the financial evidence shows that the business has continued to produce net profits, of some £21,138 and £39,332 in 2020 and 2021, respectively, during trading years that were difficult due to instances of livestock illness and the recent pandemic. Moving forwards in 2023, before any livestock and hay sales are realised, the evidence confirms that the business has secured sales in the region of £24,000 for sales of alpaca fertiliser, nursery school land rental and therapeutic care services, which is further evidence of the future viability of the enterprise.

37. Given my findings, it has not been necessary to reach a definitive view on other matters in dispute, such as working capital, labour wages and mortgage costs as this would not lead me to a different view.

38. Overall, I conclude that based upon the evidence before me, the submitted financial information clearly sets out the economic viability of the enterprise as required within LP Policy SD32. It leads me to the view that the enterprise is viable, it has a reasonable prospect of remaining viable for the foreseeable future and the profitability is sufficient to justify the proposed dwelling. Consequently, the appeal scheme accords with the provisions of LP Policy SD32 and is able to demonstrate a genuine need for a countryside location.

39. In addition, given my findings with regards to the proposed development's compliance with LP Policy SD32, as confirmed within the agreed Statement of Common Ground there would be no conflict with LP Policies SD04, SD05, and SD25. Among other things, these policies require a high quality development that respects local character and seek to direct new housing in accordance with a strategy based on settlement boundaries unless certain circumstances apply which justify a countryside location.

40. The appeal scheme would accord with the guidance of Paragraph 010 of the Planning Practice Guidance, the South Downs National Park Management Plan

[222] Jarmain v SoS and Welwyn Hatfield DC [2001]EWHC Admin 1140

(2014) and the English National Parks and the Broads: UK Government Vision and Circular 2010. Similarly, it would also accord with paragraph 80 of the Framework, which aims to avoid isolated homes within the countryside save for where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

Other Matters

41. Reference was made by the Council to the recently purchased land at Nyewood providing an opportunity for a more suitable location for the enterprise. Various reasons were provided by the appellant to explain the complications that would be posed including, difficulties with access, the location being exposed and unsuitable for certain livestock. In any event, the Council have not provided me with any adequate justification or basis within planning policy which requires the merits of the scheme to be assessed with reference to the availability of other land.

Conditions

42. A draft list of conditions was provided within the Statement of Common Ground and discussed at the hearing. I have considered these against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency or clarity.

43. In addition to the standard time condition relating to the commencement of development, a condition specifying the plans is necessary as it provides clarity. A condition requiring details of materials to be used in the construction of the dwelling is required in the interests of character and appearance.

44. A condition requiring the details of a scheme for foul water and surface water drainage are necessary to safeguard future occupiers of land and neighbouring land users from flood risk both on and off site and ensure adequate foul water drainage. Conditions requiring a design stage sustainability report is necessary to ensure an environmentally sustainable development. The requirement for below ground works in order to achieve this would necessitate these conditions being pre-commencement conditions. A condition to verify the sustainability of the as-built development is also necessary.

45. In order to ensure an overall positive impact on the natural environment an updated ecosystems services statement is necessary. To safeguard highway safety, a condition requiring the provision of parking space for vehicles is necessary.

46. The dwelling has been permitted on the basis of an essential agricultural need, and it is therefore vital to restrict its occupation in respect of that purpose. Conditions to remove permitted development rights for the dwelling, to preclude enclosure of an external area and to control the use of external lighting are also appropriate in the interests of character and appearance and due to the circumstances arising due to the countryside location of the development in the National Park and within the South Downs International Dark Night Skies Reserve.

Conclusion

47. By reason of my findings above, I consider that the proposed development satisfies the criteria of LP Policy SD32 for a new agricultural workers' dwelling.

It therefore accords with the development plan and there are no material considerations that justify a refusal of planning permission in this instance. Accordingly, I conclude that the appeal should succeed.

E Brownless

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Katherine Pang	Principal Planning Officer, East Hampshire District Council
Adrian Ellis	Team Leader, East Hampshire District Council
William Waterfield	The Farm Consultancy Group on behalf of the Council

FOR THE APPELLANT:

Leslie Milton	Appellant
Marc Willis	Planning Consultant, Willis & Co Chartered Town Planners
Leanne Buckley-Thomson (Counsel)	Barrister, No.5 Barristers Chambers
Pete Cattermole	Chartered accountant, CB Reid Ltd
Peter Williams	Reading Agricultural Consultants

INTERESTED PARTIES

Clive Shore	Adjacent landowner
Caroline McBride	Member of the public
Nelly Hall	Member of the public

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: LM-JH-01 Location plan and site plan; LM-JH-02 Rev C Plans & elevations of proposed dwelling; LM-JH-03 Roof plan of proposed dwelling.

3) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

4) The external area of the dwellinghouse surrounded by the utility, WC, living room and kitchen shall at no time be enclosed.

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no buildings, structures or works as defined within Part 1 of Schedule 2, classes A, B or E shall be erected or undertaken on the site.

6) No development shall be carried out above ground floor slab level until samples of all external facing materials and finishes have been submitted to and approved by the local planning authority in writing. Development shall be carried out in accordance with the approved sample details.

7) No external lighting shall be installed on the dwelling or within the site. This exclusion shall not prohibit the installation of internal lighting or of sensor-controlled security lighting of 1,000 lumens or less, which shall be designed and shielded to minimise upwards light spillage.

8) The development hereby permitted shall not be occupied until an updated ecosystems services statement has been submitted to and approved by the local planning authority in writing. Development shall be carried out in accordance with the approved details.

9) The development hereby permitted shall not be occupied until space has been laid out within the site and surfaced in accordance with drawing number LM-JH-01 Location plan & site plan and that space shall thereafter be kept available at all times for the parking of vehicles.

10) No development shall commence on site until details of a scheme for foul and surface water drainage has been submitted to and approved in writing by the local planning authority. Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests. The development shall be carried out in accordance with the approved details

before any part of the development is first occupied and shall be retained thereafter.

11)
Prior to the commencement of development a design stage sustainability report shall be submitted to and approved in writing by the local planning authority.

- For energy this must demonstrate with reference to design stage SAP data:-

a) Predicted CO_2 emissions from all proposed new dwelling to be at least 19% reduced through the energy efficiency of the building compared to the target emission rate baseline set by building regulations,
b) Predicted CO_2 emissions for all proposed new dwellings to be at least 10% reduced through the use of on-site low or zero carbon energy generation compared to the target emission rate baseline set by building regulations.

- For water this must demonstrate via a BRE (or equivalent) water calculator that the predicted internal mains water consumption is no more than 110 litres /person/day.
- Installation of an EV charge point.

The development shall be carried out in accordance with approved sustainability report before any part of the development is first occupied and shall be retained thereafter.

12)
Prior to the occupation of the development hereby permitted an as-built sustainability report shall be submitted to and approved in writing by the local planning authority.

- For energy this must demonstrate with reference to design stage SAP data:-

a) Predicted CO_2 emissions from all proposed new dwelling to be at least 19% reduced through the energy efficiency of the building compared to the target emission rate baseline set by building regulations,
b) Predicted CO_2 emissions for all proposed new dwellings to be at least 10% reduced through the use of on-site low or zero carbon energy generation compared to the target emission rate baseline set by building regulations.

- For water this must demonstrate via a BRE (or equivalent) water calculator that the predicted internal mains water consumption is no more than 110 litres /person/day.
- Installation of an EV charge point.

End of Schedule