

Appeal Decision

Site visit made on 3 April 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/F2605/W/21/3286485

Weathervane Farm Dereham Road, Shipdham IP25 7NJ

- 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 B Dagless (c/o PSB Services (Norfolk) Limited) against the decision of Breckland Council.
- The application Ref 3PL/2021/1210/F, dated 23 August 2021, was refused by notice dated 11 October 2021.
- The development proposed is Erection of a detached dwelling.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appeal site is an appropriate location for the proposed development, having regard to the settlement strategy set out within the development plan.

Reasons

3. With his father, the appellant runs a vehicle MOT garage from buildings at Weathervane Farm. The business gained planning permission in 2019¹ and has been operational since 2021.
4. The appeal site would be accessed via the existing junction and lane that already serves the MOT business and a range of buildings within the wider ownership of the appellant. An existing bungalow, occupied by the appellant's parents, is also accessed from this point. The appeal site is set back from Dereham Road behind a wide grass verge and substantial hedge, with existing bungalows to either side.
5. Breckland Local Plan (BLP) Policy HOU13 allows for permanent dwellings in the countryside for full-time workers in agriculture, horticulture, forestry and other rural activities, subject to a range of criteria. The supporting text to this policy notes that as a rural district, Breckland is home to a significant number of rural enterprises, the needs of which differ from urban office based businesses, and which may require staff to be located close to their place of work.
6. The National Planning Policy Framework (the Framework) also recognises that in rural areas planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. It goes on to recognise that the development of isolated homes in the countryside

¹ LPA Ref No 3PL/2019/0570/F

- may be justified where, amongst other things, there is an essential need for a rural work to live at or near their place of work in the countryside.
7. The types of enterprises considered to be rural enterprises or activities are not defined in BLP Policy HOU13 or its supporting text, or within the Framework. The main parties are agreed that the appeal site lies in the open countryside whilst the Council does not directly challenge the appellant's statement that the site is not in an isolated located in the Braintree² sense.
 8. Nor has the Council directly challenged the appellant's contention that the vehicle MOT centre is a rural activity for the purposes of BLP policy HOU13. The policy is worded broadly referring to agricultural, horticultural and forestry workers, as well as those involved in 'other rural activities'. The appellant's MOT business is rurally-located but I have no evidence before me that it caters for a specifically rural market, such as in relation to agricultural vehicles, equipment and machinery.
 9. Nevertheless, even if it is accepted that the existing business is a rural activity for the purposes of BLP policy HOU13, compliance with the criteria set out at (1) to (9) of the policy is required to be demonstrated. It is stated that the proposed dwelling would make the operation of the existing MOT centre easier for the appellant, the business benefiting from the appellant's greater residential proximity in terms of increased business productivity, increased flexibility in potential business hours and to provide additional security and a 24-hour site presence.
 10. BLP Policy HOU13(1) states that it must be demonstrated that the dwelling is essential to the functional needs of the business, ie, that there is a need for one or more full time workers to be readily available on site at most times. However, the appellant's father and co-director of the MOT centre business lives at the neighbouring property, located between the appeal site and MOT centre itself. The appellant is described as working alongside his father in running the MOT centre and, as such, there is already a residential presence close to, and directly linked with, the MOT centre business. It has not been demonstrated in compelling terms why or how a second dwelling, for the appellant, is essential to the functional needs of the business. Indeed, much of the justification cited by the appellant does not demonstrate an essential functional need for the proposed dwelling, rather that it sets out factors that would be desirable.
 11. The appellant recognises that, as a relatively recently established business, the business cannot demonstrate the level of established financial viability that BLP Policy HOU13(2) and (9) require. Even if I were to accept that an essential functional need existed for a second dwelling close to the MOT centre business, it has not been demonstrated that the business's viability is sufficiently established, whilst the argument that the presence of a temporary residential unit would be detrimental to the business's image is unsubstantiated. In any event, such an arrangement, should other rural worker's dwelling tests be satisfied, is common practice where agricultural, horticultural, forestry or other rural enterprises are establishing themselves.
 12. The appeal site lies beyond a settlement boundary and within the open countryside. It is perhaps a stretch to say that it lies within a group of

² Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2-18] EWCA Civ 610

residential properties, but it is accepted that it has residential properties on either side of it whilst there are further sporadically located dwellings along the A1075 Dereham Road and the nearby local road network. It is not, however, an isolated new dwelling in the countryside having regard to the Braintree judgement.

13. Nevertheless, whilst not in conflict with criterion (3), (4), (6), (7) and (8) of BLP Policy HOU13, it has not been demonstrated that the proposed dwelling is essential to the functional needs of the MOT business (criterion (1)) which, it is agreed between the parties, is also not an established business for the purposes of that Policy (criterion (2) and (9)). As I have concluded that the proposed development has not demonstrated an essential functional need, it also fails to accord with criterion (5). The proposal fails to accord with BLP Policy HOU13 taken as a whole and the Framework.
14. Further, whilst the proposed dwelling would be located between two existing dwellings, it would not be well located relative to the nearest services and facilities within Toftwood and Dereham. It may not be the longest of walks, but the A1075 Dereham Road appeared, at the time of my visit to the site at least, to be a busy road. For the majority of the length of the walk back towards the settlement, it was subject to the national speed limit, unlit and lacking a pavement. Whilst I accept that the grassed verges were, for the most part, reasonably generous the nature of that grassed surface would not be conducive for access for all potential users. It is likely therefore that future residents would be reliant upon the private car to access services and facilities. Although the trade-off of the appellant's commuting trips to, against living within walking distance of, the MOT business is noted, I am not persuaded that this is sufficient to offset the locational drawbacks of the appeal site's location or to overcome the shortcomings against BLP Policy HOU13 as a whole, mindful of the Cornwall Council judgement to which the appellant has referred³. The appeal site is an unsuitable location for residential development for the reasons set out.

Other Matters

15. The Council consider the proposed dwelling to be modest in its scale and appearance and well sited within the plot, in keeping with the dwellings on either side of it. Nor are there any concerns regarding living conditions considerations for future occupants or existing neighbours. In these respects there would be no harm to character and appearance, or to living conditions, with which I cannot disagree. However, the absence of harm are neutral factors and weigh neither in support of nor against the proposal. So too, the absence of highways harm or, with suitably worded planning conditions to mitigate any ground contamination should it be identified, matters of ground conditions.
16. Since the application was determined by the Council, Natural England has provided updated advice⁴ in relation to nutrient level pollution within a number of existing and new river basin catchments. This identifies that long-term nutrient pollution has led to adverse impacts upon Habitats Sites to the extent that some sites are no longer considered to be in favourable conservation status.

³ Cornwall Council v Corbett [2020] EWCA Civ 508

⁴ By letter dated 16 March 2022

17. The Council has confirmed⁵ that it cannot lawfully conclude that development within the catchments of the River Wensum Special Area of Conservation and the Broads Special Area of Conservation and Ramsar site fall will not have an adverse effect. The Council has also confirmed that the appeal site lies within these Nutrient Neutrality Catchment Area. Development within the catchment of these habitats sites which comprises overnight accommodation has the potential to cause adverse impacts with regard to nutrient pollution.
18. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information, including the potential for the development to discharge nutrients into the catchments, from the parties and consult Natural England in order to undertake an Appropriate Assessment (AA). The AA is required on a case-by-case basis to determine whether the project would adversely affect the integrity of the European Site. It would also have required a consideration of whether any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Conclusion

19. For the reasons set out, and having considered all other matters raised, I conclude that it has not been demonstrated that the appeal site is a suitable location for the proposed residential development. Whilst the proposal would avoid harm in character and appearance, living conditions, highways and ground conditions terms, the proposal's inability to robustly demonstrate an essential functional need in relation to an established business counts significantly against it. Nor is the site's relationship with the nearest settlement, and its services and facilities, conducive to ready access by means other than private car.
20. For these reasons the proposal would be in conflict with the development plan as a whole in directing development to appropriate locations and in respect of development in the countryside and material considerations do not justify a decision otherwise than in accordance with the provisions of the development plan. I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR

⁵ Breckland Council – e-mail dated 13 June 2022