



Appeal Decision

Hearing held on 7 March 2023

Site visit made on 7 March 2023

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/X1355/W/22/3313275

Sandbed Farm, Ramshaw Lane, Ramshaw, Durham, DL14 0NB

- 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 D Proudfoot against the decision of Durham County Council.
 - The application Ref: DM/22/01617/FPA, dated 31 May 2022, was refused by notice dated 16 November 2022.
 - The development proposed is described as: Erection of detached dwelling and garage together with associated poultry hut.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of cost has been made by Mr D Proudfoot against Durham County Council. This application is the subject of a separate decision.

Preliminary Matters

3. I am advised that a separate planning application was submitted and subsequently granted for a poultry building of the same size and design, and in the same location, as the poultry building that forms part of the appeal scheme. This notwithstanding, I have to consider the scheme that was determined by the Council, which includes the proposed poultry building, and I have determined the appeal on this basis.

Main Issues

4. The main issue in this appeal is whether there is an essential need for a rural worker to live permanently at or near the appeal site.

Reasons

5. The appeal site is part of a larger landholding, known as Sandbed Farm, located in an area of open countryside to the south of the settlements of Toft Hill and High Etherley and north west of the settlement of Ramshaw. It is common ground between the parties that the appeal site is not within a settlement and is in the countryside for policy purposes.
6. On the land there are a number of existing buildings which comprise an L shaped building/barn used for the storage of feed, machinery and livestock; a second barn style building containing loose boxes and dog pens; a traditionally constructed, single storey, building used as an egg hatchery; and a number of

timber framed pens and sheds used to accommodate birds. A static caravan is also situated on the site and is used as living accommodation by the appellant.

7. Policy 12 of the County Durham Plan 2020 (the CDP) allows for the provision of new, permanent, agricultural, forestry, or other rural workers dwellings outside of the built up areas in certain circumstances which are set out in criteria a to e of the policy. The wording of the policy indicates that all five criteria must be met. These are: that the nature and demands of the work involved means that there is an essential existing functional need for a permanent full time worker to live at or very close to the site in order for the enterprise to function effectively or the dwelling is required to accommodate a person with majority control of the farm; that the rural business activity has been established for at least three years and is financially sound; the proposed dwelling should not be harmful to the landscape and character of the area; the scale of the dwelling should be commensurate with the functional requirement; and the functional need cannot be fulfilled by another existing dwelling in the unit or area.
8. Paragraph 80 of the National Planning Policy Framework (the Framework) sets out that planning policies and decisions should avoid the development of isolated homes in the countryside unless, among other matters, 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.
9. In terms of the functional need, the evidence sets out that use of the site has incrementally changed since the appellant acquired the site. At the time the appellant took on the site, it was subject to a planning permission that was granted in 2006 for the use of the site for grazing and stabling of horses for personal purposes. The appellant's business has evolved over time and, from the evidence before me, currently includes raising pheasants, poultry, miniature pigs, goats, and dog breeding. The appellant also carries out egg incubation, focussing on rare breeds, and an element of livery stabling is provided at the site.
10. There is disagreement over whether some elements of this, notably dog breeding and commercial livery, are covered by various previous planning permissions for the site. In particular, the Council states that there is not a planning permission for livery stable use or for the breeding of dogs. The appellant's position is that these uses were regularised through a grant of planning permission in February 2021, referenced DM/20/01744/FPA, for a proposal described as "Retention of a Caravan for residential use, agricultural buildings and boundary fence, and a proposed pond".
11. Within the context of an appeal under Section 78 of the Town and Country Planning Act 1990 (the Act), it is not within my remit to make a formal determination of whether or not a particular use of land is lawful. Nonetheless, as the income which is derived from these uses, particularly that from dog breeding, makes up a large proportion of the profitability of the business as a whole, and the associated labour is put forward as justification of the essential functional need, these matters are relevant to whether the proposal complies with Policy 12 of the CDP. Accordingly, I shall consider the evidence as to whether these uses have the benefit of a planning permission so far as it is material to this appeal. If the appellant wishes to ascertain whether these uses are lawful, they may make an application under section 191 of the Act.

12. I have been provided with a copy of the decision notice for planning permission reference DM/20/01744/FPA, a copy of the supporting statement that accompanied the application, and a copy of the planning officers report. I have not been provided with a copy of either the planning application form or the drawings that were submitted with the planning application. The description of the development on the decision notice refers to the retention of agricultural buildings and both the supporting statement and the planning officer's report set out that in addition to the residential caravan, the proposal relates to the agricultural barn used as storage and housing livestock not being built as approved, an extension to the other barn which was built without permission, regularising the egg hatchery building which had not been constructed as approved, and the retention of the timber framed sheds and pens.
13. For the purposes of this appeal, it is the use for livery stabling and dog breeding of the barn which was extended that is in question. Planning permission reference DM/20/01744/FPA relates only to the extension to this building and the evidence indicates that the main part of this building was granted planning permission for the erection of a stable/storage building together with the change of use of the land for private equestrian use under planning permission reference 6/2008/0058/DM. The Planning Statement and planning officer's report both recognise that the extension would be used for puppy rearing and the planning officer's report indicates that the Council considered that this element would be ancillary to the main uses of the site.
14. I am advised that the drawings submitted with this application showed the pens for dog breeding within the extension to the building. Although I have not been provided with a copy of the drawings, the Council officer's report considers the matter of dog breeding and I have no reason to doubt that the submitted drawings illustrated this. I also note that the planning officer's report sets out that the Council considered that the dog breeding activity was an ancillary element of the rural business. At the hearing the appellant stated that the number of dogs kept at the site has not significantly changed in the period between planning permission DM/20/01744/FPA being granted and the present time.
15. Whilst the Council put forward at the hearing that this permission sought only to regularise certain unauthorised works of operational development at the site, the use to which those works, in this case the extension to the barn, were being put at the time is necessarily a factor. No substantive evidence has been put to me that the dog breeding activity has intensified since planning application DM/20/01744/FPA was considered, and this use was found to be ancillary. Consequently, in so far as it is relevant to this appeal, I find this to still be the case.
16. In respect of the livery stable use, whilst there is no doubt that horses have been kept at the site, the only relevant planning permission that I have been made aware of is for a retrospective change of use of the barn style building for private equestrian use (planning permission reference: 6/2008/0058/DM). There is some evidence that horses have been kept at the site on a livery basis, and it was confirmed at the hearing that this use is still carried on. However, there is nothing in the evidence before me that would indicate that this use is either authorised through a planning permission, or has been carried on continuously for a sufficient period of time to become immune from enforcement action.

17. Planning permission reference DM/20/01744/FPA did not seek the retention of the main part of the barn building, which contains the loose boxes, as this was previously authorised, and no mention of commercial livery use is made in the description of the development. I accept that livery use is mentioned in the planning statement that accompanied that planning application, but I also note that the planning officer's report also sets out that this application did not specifically seek to amend the use of the building for the purposes of livery stabling. From the evidence before me, I have difficulty seeing how a planning permission to regularise an unauthorised extension to a building could be extrapolated into authorising a use in the part of the building that did not form part of the planning application. The officers report in respect of the present proposal clearly sets out that there is not a planning permission for a commercial livery use at the site.
18. In this context, I do not find that the argument that planning permission reference DM/20/01744/FPA regularised or authorised a commercial livery use at the landholding is persuasive.
19. My conclusions, in respect of these points are for the purposes of the current appeal only and do not prejudice any future application for a lawful development certificate and/or, where relevant, any enforcement proceedings.
20. In terms of whether there is a need for a full time worker at the site, it is not dispute that for the purposes of determining this, a labour unit of one person is considered to be 2225 hours per year. The appellant's Statement of Case includes a table, setting out the labour requirements for the various activities making up the business. Although the table sets out that the total projected man hours would be 5,922.55 hours, equating to 2.7 full time equivalent workers, it is notable that the most significant proportion of the labour requirement is in respect of horses, amounting to approximately 3554 hours.
21. There is a discrepancy in the evidence in relation to the number of horses at the site, with the labour requirement table calculating this on the basis of 9 horses, whereas the financial information calculates the livery income from three horses. At the hearing the appellant advised that the number of horses at the site varies over the course of the year. Nevertheless, as set out above, although a livery business may be operating from the site, this does not appear to have the benefit of planning permission and, therefore, the labour requirement for this should not be used as part of the justification for a worker's dwelling.
22. This notwithstanding, setting aside the labour requirement for the care of horses, the other activities at the site result in a labour requirement of approximately 2,368 hours which would exceed the 2225 hours per year to justify a full-time worker.
23. In the light of this, the question becomes whether there is an essential need for a permanent full-time worker to live at, or very close to, the site in order for the enterprise to function effectively. The appellant's case is based around dealing with out of hours incidents including animal welfare, reacting to power failures which would affect the egg hatchery and heat lamps used in rearing chicks, reacting to equipment failures in the hatchery, and site security.
24. Evidence has been submitted in the form of an incident log kept by the appellant covering 2017 until the end of 2022, and a record of veterinarian's

visits for the period June 2016 to May 2020. Whilst the veterinarian's record has been hand annotated with approximately 20 notes that the event occurred after 17:00, this is not borne out by the times recorded next to the date of treatment which indicate only two visits were made after 17:00 and both of these were before 18:00. This notwithstanding, even accepting that the other visits were after 17:00, this would equate to approximately 5 out of hours visits per year. The incident log also records approximately 15 occasions when an out of hours veterinarian visits was required in the roughly four year period between January 2019 and December 2022, or approximately four per year. There were also three occasions where the appellants attention was required overnight with dogs in labour but it is not clear at what time of day it became apparent that overnight attention would be required.

25. Whilst the incident log indicates that there were some thefts of livestock prior to December 2020 when closed circuit television (CCTV) was installed, there were no incidents of livestock theft recorded after this. I have noted that there have been a number of incidents of trespass and of vehicles accessing the site, although I am also mindful that the Council have commented that some of the vehicle movements could be a result of drivers mistaking the access for the adjacent caravan and camp site.
26. The appellant also suggests that it is necessary to be present at the site in order to react to power disruptions. Although the site has a back up generator to provide power in the event of a disruption to the electricity supply, it was confirmed at the hearing that this does not automatically start if there is a power failure. The appellant also confirmed that acquiring a generator which starts automatically has not been pursued due to the cost of the equipment. The incident log only records two occasions where the back up generator was required to be used.
27. Although predation by wildlife is an issue with poultry farming, there is only one incident of a fox at the site recorded in the incident log.
28. The Council point out that guidance from the Department of the Environment Food and Rural Affairs states that poultry require daily inspections to check that all birds are behaving normally, and that feed and water is checked at least once every 24 hours. The Council also state that the British Horse Society states that horses need to be checked a minimum of twice a day. It is noted that neither organisation advises that a permanent on-site presence is required.
29. Although remote monitoring through CCTV is possible, there are technological limitations to this in terms of low light visibility and microphones being susceptible to wind noise if used externally. The Council's statement indicates that the interior of the hatchery building is monitored by CCTV at present. The appellant confirmed that the appeal site does have access to broadband although it was pointed out that in the event of a power failure, routers would not function and that mobile internet connections are unreliable at the site. Whilst the Council suggested that remote monitoring of the wider site is feasible, it could not provide an example of such systems being successfully implemented elsewhere. It was advised at the hearing that the appellant does not consider that remote monitoring is an acceptable approach to providing animal welfare at the site.

30. With regard to the egg hatchery element of the business, from the evidence and from what I heard at the hearing, the eggs within the incubators are required to be manually rotated at 12 hourly intervals on a daily basis for the first two weeks that the eggs are in the incubators. The appellant states that this which necessitates working outside the normal working hours of the business. However, as it was advised that the main working hours at the site are between 06:00 and 20:00 there does not appear to be any reason that this activity could not be carried out within the usual working hours or could be planned for if living nearby as it is an anticipated, regular, task. I have also noted that heat lamp bulbs used with newly and recently hatched chicks can burn out or fail. The appellant's evidence states that over a five year period approximately 50 heat bulbs and lamp units have had to be replaced, which would equate to approximately 10 lamps per year. Whilst I accept that this could occur overnight, as it would be a random occurrence there is no guarantee that this would occur before any inspection during the night.
31. The evidence does indicate that there are times when the various different aspects of the business require attendance or attention during the night. However, the evidence indicates that unexpected incidences that cannot be planned for are infrequent and are not daily, or even weekly, occurrences. I accept that living at the site would be more convenient for the appellant, nonetheless, based on the evidence put to me, I do not find that there is an essential need for a permanent presence at the site in order for the enterprise to function effectively or that the incidence or risk of crime or trespass is so great that a constant presence is required.
32. CDP Policy 12 part b requires that the rural business activity has been established for at least three years, is currently financially sound, and has a clear prospect of remaining so. It is not in dispute that the business has been operating for at least three years. The financial information provided with the application and appeal indicates that the business made a small profit in 2020 and that this increased in the following two years. The Council suggest that it needs to be demonstrated that the enterprise has been profitable for a period of at least three years. The wording of Policy 12 does not require evidence that the business has been profitable for at least three years, nor is this requirement mentioned in the supporting text which sets out how the policy will be implemented. The requirement of the policy is that the business is currently financially sound and that it is likely to remain financially sound into the future.
33. It is not being argued that the business is currently unviable. The Council have suggested that the level of profit shown in 2020 would not cover the appellant paying themselves the national minimum wage, and that the business would not have been profitable in that year. However, the national minimum wage does not apply to the self-employed. Whilst not available at the time that the original application was considered, actual figures for 2022 were provided before the hearing opened. The financial evidence does indicate that the business has been profitable for three years with the level of profits rising each year. This would remain the case even if the income from the livery stable use is discounted.
34. The financial information also indicates that income from the poultry and egg incubation elements of the business has increased substantially over the three year period. Although the Council have raised concerns that the largest area of

- income is derived from sales of puppies and noted that the average price of dogs is starting to fall from the levels seen during the height of the coronavirus pandemic, there is no clear evidence before me which would suggest that the business would not remain profitable into the future.
35. It is common ground that there are no other purpose built dwellings on the site that could provide accommodation. The Council suggest that temporary sleeping accommodation could be provided within the hatchery building at time when it was known that either dogs, pigs or goats were due to give birth. When I visited the site, I saw that within the hatchery building there were spaces separated from the areas which are used for incubation and for recently hatched chicks that could provide temporary overnight accommodation.
36. It was, however, pointed out there are not regular birthing times for goats, pigs, and dogs in the same way that there are, for example, for sheep. As a consequence, overnight attendance could not necessarily be planned in advance. However, from the evidence in the incident log, there has been a low number of occasions when overnight attendance has been required and this could be addressed through having occasional sleeping accommodation within a room within the hatchery building.
37. I am mindful that there is presently a temporary planning permission for the use of the caravan at the site for residential accommodation. The decision notice for this permission cites the reason for the temporary permission as "The case for a permanent dwelling for a rural worker has not been justified, a temporary permission would allow sufficient time for the enterprise to adopt automated procedures and the applicant to seek suitable alternative accommodation". The appellant disputes that they suggested at the time of that application that automated equipment was to be procured and notes that at the time the Council accepted that an onsite presence was required due to the scale of the business and the manner in which it was operated. Nonetheless, it is clear from the planning permission that the Council did not accept at that time that a permanent dwelling was justified.
38. There are a number of settlements, High Etherley, Toft Hill and Ramshaw which are within 1 mile of the appeal site and the settlements of Evenwood and West Auckland are also only a few minutes drive time from the site. It has not been argued that suitable locally available properties are unaffordable. The appellant confirmed at the hearing that when considering accommodation options, nearby properties were not considered as they did not consider it practical or reasonable to have to travel any distance outside of normal working hours in order to either carry out regular planned tasks or to address unplanned or emergency situations. Consequently, it has not been proven that the functional need cannot be met from a nearby property, as this has not been investigated.
39. It is not in dispute that the appeal proposal would not have an adverse effect on the surrounding landscape and character of the area, nor is it suggested that the size of the dwelling would be inappropriate.
40. In the light of the above, the appeal proposal would meet three of the five criteria set out in Local Plan Policy 12. The wording of the policy does, nevertheless, require all five criteria to be fulfilled. The Council have previously accepted that certain aspects of the business require a presence at the site, albeit in order to allow the business to develop. It is clear that the business

has grown in the time since as a result of the onsite presence. However, from the evidence before me, as set out above, I have found that there is not an essential need for a worker to live at the site in order for the enterprise to function effectively.

41. Furthermore, it has not been demonstrated that the business could not be operated by a worker residing in one of the nearby settlements. The appellant did not investigate properties nearby as they did not consider it practical or reasonable. Whilst living on the site itself may be the appellant's preferred option, this does not fulfil criteria e) of Policy 12 as it does not show that the functional need for a worker to live close to the place of work could not be met by a property in one of the nearby settlements a few minutes drive from the site.
42. I therefore find that it has not been demonstrated that there is an essential need for a rural worker to live at or near the appeal site. The proposal would not comply with the relevant requirements of Policy 12 of the CDP or Paragraph 80 of the Framework.

Other Matters

43. It is common ground that the proposed poultry shed to be located on a different part of the wider site is in an acceptable form of development in the area and I have noted that a separate planning permission has been granted for a building of an identical design in the same location. The proposed building would be clad in timber boarding and would measure approximately 12.3 metres by 5.8 metres with an overall height of approximately 3 metres. It would be located on a part of the holding close to the other pens and runs used for housing birds at the site.
44. CDP Policy 10 allows for development in the countryside necessary to support, amongst other things, an existing agricultural or other existing rural land based enterprise, including the provision of new buildings required for the functioning of the enterprise. This is subject to the development being of a design, construction, and scale which is suitable for and commensurate to the intended use.
45. From what I have read and from what I saw when I visited the site, I am satisfied that this element of the proposal complies with the relevant requirements of CDP Policy 10. This finding does not, however, lead me to a different conclusion overall. As this element of the scheme is clearly severable from the proposed dwelling element, it would be open to me to grant permission for the proposed poultry building only. However, as a separate planning permission has already been granted for this element of the proposal, which can be implemented independently, there would be little benefit to the appellant in me doing so.

Conclusion

46. I have found that there is not an essential need to a rural worker to live at the site and that the proposal would not comply with Policy 12 of the CDP. This is an important matter and as such the proposal would conflict 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. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S Barker MRTPI	Prism Planning
Mr R Semain	Appellant's Accountant
Mr D Proudfoot	Appellant
Mrs L Proudfoot	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Spurgeon	Senior Planning Officer, Durham County Council
Mr S Pilkington	Area Team Leader South West, Durham County Council
Ms G Heron	Senior Planning Officer, Durham County Council