



Appeal Decision

Hearing held on 23 May 2023

Site visit made on 23 May 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/D0515/W/22/3306697

Block Fen Stables, Block Fen Drive, Wimblington PE15 0FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Crossley (Chatteris Leisure Ltd) against the decision of Fenland District Council.
 - The application Ref F/YR21/1198/VOC, dated 14 September 2021, was refused by notice dated 18 March 2022.
 - The application sought planning permission for Erection of 3-Bed detached bungalow with attached double garage together with erection of stable block without complying with a condition attached to planning permission Ref F/YR01/1120/F, dated 16 January 2002.
 - The condition in dispute is No 5 which states that: The dwelling hereby approved shall only be occupied by a person solely or mainly engaged in the equestrian activity occupying the buildings and land edged blue on the site plan or a dependent or dependants of such a person residing with hm or her.
 - The reason given for the condition is: The dwelling is permitted as an exception to general countryside planning policy, justified by its close operational links with the stables.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M Crossley against Fenland District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The location plan provided with the planning application differs slightly from that attached to the permission which it seeks to vary. Nonetheless, given that I am dismissing the appeal on other grounds it is not necessary to consider this matter further.
4. An interested party has raised a query with regard to the site address which he suggests is incorrect. However, the address is identical to that given on the application form in respect of planning permission F/YR01/1120/F. Furthermore, I am satisfied that (in conjunction with the location plan) it sufficiently allows identification of the appeal site and as such, no party has been prejudiced in this regard.

Background and Main Issue

5. Mr Briscoe, an interested party and owner of the existing dwelling adjacent to the appeal site, received planning permission¹ in 2002 (the 2002 permission) for the erection of a detached bungalow with attached double garage and a stable block. It is common ground that this development has commenced, with foundations laid, and that the permission remains extant. However, based on the evidence before me, no further construction work has occurred for well over a decade. Condition 5 of the 2002 permission requires that the approved dwelling is only occupied by a person solely or mainly engaged in the equestrian activity occupying the buildings and land edged blue on the approved site plan or a dependent or dependants of such a person residing with him or her.
6. The dwelling approved under the 2002 permission was proposed to be located on land owned by the appellant with the remaining land edged blue on the site plan within the ownership of Mr Briscoe. The evidence indicates that the initial intention was for Mr Briscoe, to purchase this land from the appellant. However, at that time, the two parties could not reach an agreement with regard to the purchase of the land.
7. In 2004 Mr Briscoe applied for planning permission for a dwelling on his own land, (within the land edged blue on the site plan approved under the 2002 permission). The Council refused permission and a subsequent appeal was dismissed in 2005 (the Previous Appeal)². The Previous Appeal is addressed under 'other matters' later in this decision letter.
8. Mr Briscoe eventually obtained planning permission in 2007³ (the 2007 permission), for the erection of a '3-bed bungalow with attached double garage for occupancy associated with stables' on his land. This permission included a similar occupancy condition to the 2002 permission. The approved dwelling was constructed and is now occupied. There is also a planning obligation (dated 25 September 2007) attached to the 2007 permission which effectively requires that the dwelling is demolished in the event that the dwelling approved under the 2002 permission is occupied in accordance with condition 5.
9. The appellant contends that Condition 5 attached to the 2002 permission is no longer necessary, reasonable or relevant. The primary basis for this assertion is that there is no need for a second dwelling restricted to occupation by persons solely or mainly engaged in equestrian activity, given that the dwelling approved under the 2007 permission has been completed and occupied.
10. Therefore, the main issue is whether condition 5 is necessary, reasonable and relevant having regard to the Council's strategy for the location of residential development and whether there is a need for a rural worker to reside permanently at the appeal site.

Reasons

11. The reason given on the 2002 decision notice for condition 5 is 'the dwelling is permitted as an exception to general countryside policy, justified by its close operational links to the stables'. There is a clear implication here that the

¹ LPA reference F/YR01/1120/F

² LPA reference F/YR04/0054/F, PINS reference: APP/D0515/A/04/1152543

³ LPA reference F/YR07/0810/F

condition was imposed to allow the dwelling as an 'exception', in circumstances where the proposed development would otherwise have conflicted with the development plan at that time. The Council's statement of case re-enforces this conclusion. Indeed, during its consideration of the planning application subject of this appeal, the Council considered whether the development would accord with the current development plan policies in relation to the principle of development. These policies have superseded those in place at the time that the 2002 permission was granted.

12. This was the correct approach and accords with the advice contained within the National Planning Practice Guidance⁴ that applications under Section 73 of the Town and Country Planning Act 1990 (as amended) should be considered in accordance with the statutory test at Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended).
13. The appellant asserts that the principle of development has already been established, and that the Council should have only considered the condition in question. However, condition 5 relates specifically to the principle of development. Its purpose is clearly to facilitate an exception to development which would otherwise have been unacceptable in principle. As such, it is entirely pertinent for consideration to be given to whether a dwelling in this location would accord with the adopted development plan in the absence of condition 5.
14. Local Plan⁵ Policy LP3 sets out the Council's spatial strategy. The policy sets out a hierarchy of settlements. Located in the countryside, the appeal site is not within a settlement as defined by the Local Plan. It is therefore in an 'elsewhere' location within the terms of Policy LP3. This policy outlines that in 'elsewhere' locations development will be restricted to certain types of development and in such cases will be subject to an occupancy condition. The removal of condition 5 would result in a new dwelling, unrestricted by any occupancy condition, in an 'elsewhere' location contrary to the requirements of Policy LP3. The fact that the development has commenced does not negate this conflict, given that there is not a realistic prospect of the development being completed and occupied.
15. The objective of Policy LP3 is to ensure sustainable growth in settlements with access to services and facilities. For the avoidance of doubt, the appellant has not advanced any case to indicate that the development would meet this objective.
16. Local Plan Policy LP12 allows certain types of development outside of the settlement boundaries. However, again, in the event that condition 5 were removed the resultant dwelling would not fall within any of these categories of development. However, Local Plan Policy LP12 also includes a paragraph which states:

'Where a restrictive occupancy condition is imposed on any approved dwelling in such locations [elsewhere locations], comprehensive evidence for its removal or modification will be required to justify the change'.
17. As such, there is a mechanism within Policy LP12 to allow for removal of an occupancy condition subject to evidence justifying that change.

⁴ Paragraph: 019 Reference ID: 17a-019-20140306 Annex A

⁵ Fenland Local Plan (adopted May 2014)

18. The main parties are in agreement that there is currently no identified need for a rural worker to live in the dwelling approved under the 2002 permission. The main parties also agreed at the Hearing that there is no need for more than one dwelling to house a person (and dependants) solely engaged in equestrian activities. Indeed, the dwelling approved under the 2007 permission fulfils that role. There is no substantive evidence that the equestrian activities on Mr Briscoe's land have ceased. A general assertion was made by the appellant that those activities have recently reduced. However, during the Hearing, the appellant was unable to substantiate this assertion with substantive evidence.
19. Whilst there is no need, at this present time, for a person 'solely engaged in equestrian activities' to live at the dwelling approved under the 2002 permission, this is only because the Council approved the dwelling under the 2007 permission. Indeed, it is clear that the Council and the applicant (Mr Briscoe) sought at that time to prevent the possibility of both dwellings being completed and occupied, through a planning obligation. The planning obligation is a material consideration of significant weight in the determination of this appeal. This is because it ensures that only one of the two approved dwellings can lawfully house a person 'solely engaged in equestrian activities'. Indeed, it stipulates that the dwelling approved under the 2007 permission would require demolition in the event that the dwelling approved under the 2002 permission is occupied in accordance with condition 5.
20. I accept that the appellant could complete the construction of the dwelling at any time, given that it is common ground that the 2002 permission remains extant. However, the appellant is highly unlikely to do so and have it occupied in accordance with Condition 5. Indeed, he indicated at the hearing that there is no prospect of this happening as it would require the co-operation of Mr Briscoe, which would be unlikely to be forthcoming.
21. The other assertion made by the appellant is that he could construct the dwelling, leave it standing unoccupied and subsequently apply to convert a 'redundant' rural building in accordance with Framework Paragraph 80c. However, this is also extremely unlikely given that there is no certainty that a subsequent planning permission would be granted to convert the 'redundant' building. Indeed, the fact that the dwelling has remained unfinished (with only foundations constructed) for more than 20 years also provides a good indication that the prospect of the dwelling being completed is, at best, extremely limited.
22. The planning obligation is a crucial consideration because without any realistic likelihood of the dwelling being lawfully occupied in accordance with Condition 5, it effectively eliminates the prospect of the dwelling being constructed and completed on the appeal site.
23. For the reasons outlined, there is insufficient justification for removing Condition 5. As such, its removal would not be supported by Policy LP12. To the contrary, its removal would result in a dwelling located in a location isolated from services and facilities and contrary to the spatial strategy for the location of development set out under Policies LP3 and LP12.
24. There would also be a conflict with Framework Paragraph 80 which outlines that planning decisions should avoid the development of isolated homes in the countryside except in certain circumstances (none of which apply).

25. In terms of the requirements set out for planning conditions within the Framework, Condition 5 is necessary and relevant to planning, as it prevents an unrestricted dwelling which would be contrary to the adopted development plan policies. The condition is also reasonable, given that it is clear that the Council only granted permission on the basis that there was an established need for a person engaged in equestrian activities. The dwelling has not been completed and is very unlikely to be completed. As such, it is reasonable to retain control such that there would not be a breach of the Council's development plan policies. The condition is also sufficiently precise and enforceable (two requirements not disputed by the appellant). Condition 5 therefore meets the requirements of Framework Paragraph 56.

Other Matters

Custom and Self-Build

26. The appellant has indicated that there is a need for custom and self-build housing in the district. However, there is no substantive evidence to indicate that the Council are failing to meet their statutory duties⁶ in this regard. Furthermore, whilst the appellant has indicated a willingness to enter into a Section 106 agreement to secure this, there is no such obligation before me. The use of a condition could potentially secure the development as a custom or self-build dwelling. However, given the lack of substantive evidence indicating a need for such dwellings within the District, this consideration would not attract any significant weight and certainly would not override the conflict with the adopted development plan policies.

The 2005 Appeal Decision

27. The conclusions reached by the Inspector in the 2005 appeal decision are relevant to the main issue of this appeal. However, the site-specific circumstances have changed significantly since that appeal was determined with a bungalow (approved under the 2007 permission) now built and subject to a planning obligation. As such, the suppositions of the Inspector with regard to future development and applications for development on the appeal site have been superseded by the events that have occurred since he issued his decision in 2005. Furthermore, based on the evidence before him, he found that there would have been a 'distinct possibility' that two dwellings would be constructed were he to allow the appeal, even taking into account the potential for a planning obligation to restrict that possibility from coming to fruition.
28. Based on the evidence before me and the case-specific circumstances (which have changed significantly since 2005), I have reached the opposite conclusion. Indeed, based on the evidence before me, I consider it extremely unlikely that the dwelling approved under the 2002 permission will be constructed without the co-operation of Mr Briscoe (which is unlikely to be forthcoming). For that reason alone, the conclusions of the Inspector in the previous appeal do not alter my findings. In addition, the appeal decision was issued in a completely different planning policy context, with new national and development plan policies adopted since 2005.

⁶ Self Build and Custom Housebuilding Act 2015 (as amended)

Conclusion

29. The proposed development would result in an isolated dwelling which would have poor access to services and facilities and would be contrary to the Council's strategy for the location of residential development. As such, it would conflict with the development plan taken as a whole.
30. One market dwelling would result in some social and economic benefits but these would be limited, given the small scale of the proposal. Even if the dwelling were a self- or custom-build dwelling the benefits would still be limited, given the absence of any substantive evidence of the Council's failure to grant sufficient permissions for such dwellings within the district.
31. As such, the benefits would not be sufficient to outweigh the conflict with the development plan. Indeed, there are no material considerations raised which indicate that a decision should be made other than in accordance with the development plan. To the contrary, Condition 5 meets the tests set out within the Framework.
32. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Martin Richard Crossley	Managing Director Chatteris Leisure Ltd
John Richard Shephard	Head of Planning and Design J & J Design

FOR THE LOCAL PLANNING AUTHORITY:

Danielle Brooke	Senior Planning Officer
David Rowen	Development Manager

INTERESTED PARTIES:

Jeffrey Briscoe	Neighbouring landowner
Trevor Feary	Accompanying Mr Briscoe