



Appeal Decisions

Site visit made on 23 June 2023

by J D Westbrook BSc(Econ), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal A Ref: APP/A3010/W/23/3314431

Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire, DN10 4ER

- 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 T Hollingshead against the decision of Bassetlaw District Council.
 - The application Ref 22/01035/FUL, dated 28 July 2022, was refused by notice dated 29 September 2022.
 - The development proposed is described as the continued stationing of a temporary mobile home.
-

Appeal B Ref: APP/A3010/W/23/3314435

Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire, DN10 4ER

- 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 T Hollingshead against the decision of Bassetlaw District Council.
 - The application Ref 22/01036/FUL, dated 28 July 2022, was refused by notice dated 29 September 2022.
 - The development proposed is described as the completion and permanent retention of a partially completed dwellinghouse.
-

Appeal C Ref: APP/A3010/W/23/3314425

Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire, DN10 4ER

- 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 T Hollingshead against the decision of Bassetlaw District Council.
 - The application Ref 22/01034/FUL, dated 28 July 2022, was refused by notice dated 29 September 2022.
 - The development proposed is described as the retention and completion of a partially constructed agricultural building comprising a farm equipment store and workshop, facilities for hay, straw and feedstuffs storage, and a farm office and records store.
-

Decisions

Appeal A Ref: APP/A3010/W/23/3314431

1. The appeal is allowed and planning permission is granted for the continued stationing of a temporary mobile home at Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire, DN10 4ER, in accordance with the terms of the application, Ref 22/01035/FUL, dated 28 July 2022, and the plans submitted with it, subject to the following conditions.

1. The use hereby permitted shall be for a limited period being the period of two years from the date of this decision. The building hereby permitted shall be removed and the land restored to its former condition on or before two years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Drawing JC/H281/500 dated June 2016, Site Location Plan.

Appeal B Ref: APP/A3010/W/23/3314435

2. The appeal is dismissed.

Appeal C Ref: APP/A3010/W/23/3314425

3. The appeal is dismissed.

Main Issues

4. In all three appeals the main issue is the effect of the proposed development on the countryside around Misterton. In cases A and B there is an additional issue relating to the effect of the proposals on flood risk.

General Background

5. All three of the appeals relate to proposed developments on Fox Covert Farm. From the information available to me, the main vehicular access to the farm from Fox Covert Lane and the area of land that contains the existing agricultural buildings are in the ownership of the appellant. It would appear that the field to the west of this, and used by the appellant for grazing of animals, is in a separate ownership. The existing agricultural buildings include a number of individual pens for small calves, small barns for storage and housing of animals, a walled-off area that appears to be used as residential amenity land, and the three structures that are the subject of the three appeals. At the time of my visit, there were around 100 animals present in the pens/barns and grazing in the adjacent field.
6. To the south-west of the adjacent field is housing, and to the east of the farm is open land, industrial buildings and a business park. To the north of the farm complex is open countryside.
7. I have very little detailed information about the current operations of the farm. The appellant has provided Profit and Loss accounts for the year ended April 2020 and the period from April 2020 to September 2020. These show a modest net profit. There is no information relating to more recent accounting periods, nor do I have a business plan for the operation. I have copies of letters from Mission Organic Dairying Ltd indicating an expectation that several hundred calves would be purchased by the appellant in 2023, mainly in the period March – May, although at the time of my visit there were only around 100 animals present. In addition, the NFU has provided a letter including comments on the general requirements for animal welfare and supervision relating to operations of the type carried out by the appellant. Such requirements include the need for 24 hour supervision, health monitoring of livestock, bio-security, and site security.

8. Policy DM1 of the Bassetlaw Core Strategy & Development Management Policies DPD (DPD) indicates that proposals for standalone economic development in rural areas will be supported only where, amongst other things, they can demonstrate that they are viable as a long-term business. Policy DM3 of the DPD indicates that proposals for new agricultural buildings will be supported where they can demonstrate that the buildings or structures are necessary for agricultural purposes in the specific location proposed and other more suitable sites are unavailable, and also that the scale, design, and form of the proposal will be appropriate for its location and setting and be compatible with surrounding land uses. Finally, Policy DM12 of the DPD indicates that proposals for the development of new units in Flood Zone 2, that are not defined by national planning guidance as being suitable for this zone, will not be supported while development sites remain available in sequentially superior locations across the District.
9. Policy 5 of the Misterton Neighbourhood Plan (NP), made in September 2019, indicates that proposals for residential development outside the development boundary will be supported where they accord with the principles included within Policy DM3 of the DPD. The appeal sites lie outside of the development boundary for Misterton, in an area of generally open countryside to the south-east of the main body of the village. Policy 10 of the NP identifies land allocated for housing on the southern part of the field adjacent to the current farm building complex and to the west of the existing farm access track (Site NP12).

Reasons

Appeal A – Mobile home

10. The mobile home is in place within the farm building complex. Planning permission for a temporary mobile home was granted in 2013, and then again in 2017. It is sited in the south-eastern corner of the complex between a partially completed dwelling (the subject of Appeal B) and a partially constructed agricultural building (the subject of Appeal C).
11. The Council contends that the appellant has not provided sufficient evidence to demonstrate the functional and financial operations of the farm and why the continued siting of a mobile home is necessary to support this. In addition, the site is located within Flood Zone 2, and the submitted Flood Risk Assessment (FRA) does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the Planning Practice Guidance (PPG).
12. In this case, while there is little up-to-date information provided relating to the functional and financial operations of the farm, there are a number of animals currently present on the farm and there is sufficient evidence on the ground that these animals necessitate 24 hour supervision with a suitable farmer or farm employee located within sight and sound of the animals during the whole of this 24-hour period. In the absence currently of any other accommodation that meets this requirement, I consider it reasonable to grant a further temporary permission for the mobile home at the appeal site. On the basis of the above, the structure may be considered necessary for agricultural purposes in the specific location proposed and, at this present time, other more suitable sites would appear to be unavailable. Its limited scale, and the design and form of the proposal are appropriate for its location and setting, and are compatible with surrounding land uses.

13. The appellant has supplied a recent FRA that appears to meet the requirements of the relevant sections of the PPG. It notes that the mobile home lies within a Flood Zone 2 and it provides a Sequential Test Report that concludes that there are no sites within sight and sound of livestock on the farm that are available and appropriate within Flood Zone 1. Also there is no requirement for the Exception Test. I note that there is a strong likelihood of new housing being constructed on site NP12 in the near future, and that such housing would be both within Flood Zone 1 and within sight and sound of the livestock on the farm. However, there remains a need for residential accommodation in order to supervise the livestock currently on the farm, and I therefore find that it is necessary for the appellant to retain the existing mobile home until an alternative property could potentially become available on site NP12. I consider a period of two years to be reasonable in the current circumstances.
14. In conclusion, with regard to Appeal A, I find that the continuation of use of the temporary mobile home for a further 2 years would not be harmful to the countryside around Misterton, and that the lack of any immediately available reasonable alternative accommodation would, in this case, justify the proposed development on this site within Flood Zone 2 on a further temporary basis.

Appeal B - Completion of partially constructed dwellinghouse

15. There is a partially completed dwellinghouse located a few metres to the north of the temporary mobile home. In terms of external structure it is almost complete and at the time of my visit it included a sign to indicate that it was being used as a farm office. Planning permission to retain and complete the house was refused in 2020 and dismissed on appeal in 2021. The appeal was dismissed largely on the grounds that the house would have an unacceptable effect on flood risk and that there was insufficient evidence to show that the sequential test had been passed. Moreover, it was not adequately demonstrated that there were not reasonably available sites appropriate for the house in areas with a lower risk of flooding.
16. The Council notes that Policy 5 of the NP makes provision for residential development where it would accord with the principles included within Policy DM3 of the DPD, which, in turn, states that proposals for new agricultural buildings will be supported where they can demonstrate that the buildings or structures are necessary for agricultural purposes in the specific location proposed and other more suitable sites are unavailable. However, the Council contends that the applicant has not provided sufficient evidence to demonstrate the functional and financial operations of the farm and why a permanent dwelling is necessary to support this.
17. In addition, the Council refers to Policy DM12 of the DPD, which states that proposals for new development in Flood Zone 2, that are not defined by national planning guidance as being suitable for such a zone, will not be supported while development sites remain available in sequentially superior locations across the district.
18. The appellant notes that there is a need for someone to reside within sight and sound of the livestock in his care. This matter is supported by the general comments of the NFU relating to the type of agricultural activity carried out by the appellant. Furthermore, the appellant contends that there are no other reasonably available sites that could meet this requirement of proximity. He has also provided Profit and Loss Reports that show the business to have made

a modest profit in the year up till April 2020 and also in the period from April 2020 to September 2020.

19. Despite the above, I have strong concerns that there are no recent financial reports to confirm the continued profitability of the enterprise. There are no details of the number of animals actually housed at the farm over recent years, and there is no business plan to indicate the likelihood of this modestly profitable operation being able to continue into the future, particularly given the fact that a significant amount of the available grazing land does not appear to be in the control of the applicant and is allocated for housing in the NP. In the light of this, I agree with the Council that there is insufficient evidence to support permitting a permanent dwelling on the site and also, as noted above, that Policy DM1 of the DPD indicates that proposals for economic developments in rural areas will be supported only where, amongst other things, they can demonstrate that they are viable as a long-term business.
20. Since the previous refusal and appeal dismissal, the appellant has submitted a new FRA. However, as noted above, the proposed dwelling lies within a Flood Zone 2 and, from the information available to me, it appears that there is a strong likelihood of new housing being constructed on site NP12 of the NP in the near future. Furthermore, such housing would be both within Flood Zone 1 and within sight and sound of the livestock on the farm. Whilst I have earlier indicated that it is reasonable for the appellant to have continued temporary use of the mobile home for immediate operational needs, I consider that there is a reasonably available site in very close proximity and that the proposal does not, therefore, meet the Sequential Test required by the National Planning Policy Framework (the Framework), which states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
21. In conclusion, with regard to Appeal B, I find that there is insufficient evidence to demonstrate both the functional and financial viability of the farm, and also why the dwelling is necessary to support its operations. In addition, from the information available to me, I find that there is a reasonably available site in very close proximity that would be in a zone with a lower risk of flooding and that would be within sight and sound of the farm operations. On this basis, the proposed permanent dwelling would be harmful to the countryside around Misterton and would conflict with Policies DM1, DM3 and DM12 of the DPD; with Policy 5 of the NP; and with the requirements on planning and flood risk in the Framework.

Appeal C – Completion of partially constructed agricultural building

22. The proposed building is partially constructed and is sited in the south-east corner of the farm complex of buildings, a few metres to the south of the existing mobile home. The building, if completed, would be used for storage, a workshop and a farm office. Planning permission was first granted to retain and complete the partially constructed agricultural building in 2017, but it would appear that certain conditions attached to the permission were not complied with, such that it is no longer valid.
23. The Council contends that the building is not necessary or indeed essential for the current operational requirements of the agricultural unit. Furthermore, the appellant has not provided sufficient evidence to demonstrate the functional

and financial operations of the farm and why the building is necessary to support this operation.

24. The appellant has indicated that the building has not been completed due to a number of factors, including a boundary dispute, access issues, and the effects of Covid and increased building costs. I have little in the way of evidence supplied on these matters and how and why they arose, though I do have some sympathy with the more recent circumstances that may potentially have affected building works in general. Nevertheless, there is little evidence before me that the farm business relies on a permission for the proposed building for its continued operation.
25. The appellant has referred to the need for full and careful record-keeping associated with the business, and has made reference to the Welfare of Farm Animals (England) Regulations 2000, which includes requirements for the health and welfare of animals and record-keeping. The latest Regulations would appear to be the 2007 version, though I do not doubt that the issues of health and welfare and record-keeping remain of great importance. Nevertheless, I consider that, unlike the requirement for on-site surveillance of animals on health and welfare grounds, there would not appear to be any specific need for the keeping and maintenance of records in a separate building on site.
26. In conclusion, with regard to Appeal C and for similar reasons that apply with regard to the other two appeals, I find that the appellant has not provided sufficient evidence to demonstrate the functional and financial operations of the farm and why the proposed agricultural building is necessary to support the operations. On this basis, it would be harmful to the countryside around Misterton and would conflict with Policies DM1 and DM3 of the DPD.

Other Matter

27. The appellant has drawn attention, in the case of the previous appeal regarding Appeal B, to the acknowledgement that the housing locational policies of the Core Strategy were at that time out of date and that the tilted balance set out in paragraph 11 of the Framework should, therefore, apply. However, it would appear that the Council can now demonstrate 13.5 years' worth of housing (as published in July 2020 in its five-year supply statement) and as such, a deliverable 5 years supply of housing can be achieved. In this case, therefore, the requirement to use the 'tilted balance' principle is not applicable.

J D Westbrook

INSPECTOR