



Appeal Decision

Hearing held on 11 July 2023

Site visit made on 11 July 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/M0933/W/22/3299401

Beckside Smithy, Little Urswick, Ulverston LA12 0PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Chris Milby against South Lakeland District Council.
 - The application Ref SL/2021/1123, is dated 25 November 2021.
 - The development proposed is a dwelling for an essential rural worker to support the provision of on site farrier services including medical, dietary, surgical treatment, veterinary support and convalescence for animal welfare purposes.
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Decision

1. The appeal is allowed and planning permission is granted for a dwelling for an essential rural worker to support the provision of on site farrier services including medical, dietary, surgical treatment, veterinary support and convalescence for animal welfare purposes at Beckside Smithy, Little Urswick, Ulverston, LA12 0PY in accordance with the terms of the application, Ref SL/2021/1123, dated 25 November 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. South Lakeland District Council has merged with Barrow-in-Furness Borough Council and Eden District Council to form Westmorland and Furness Council. The development plans for the merged local planning authorities will remain in place for the area within the new authority until such time as they are revoked or replaced.
3. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council has set out its case and putative reason for refusal in its officer report and appeal statement. Based on what is before me, I see no reason to disagree.

Main Issue

4. The main issue is whether there is an essential need for a rural worker's dwelling on the site, having regard to local policies and national guidance which seek to restrict development in the countryside.

Reasons

Policy Context

5. The site is in the countryside and outside any designated development boundary. Paragraph 80 of the National Planning Policy Framework 2021 (the Framework) states that such dwellings should be avoided unless particular circumstances apply. This includes the essential need for a rural worker to live permanently at or near their place of work in the countryside.
6. Policy CS1.2 of the 2010 adopted South Lakeland Local Development Framework Core Strategy (the CS) states that exceptionally, new development will be permitted in the open countryside in a limited number of circumstances including where it has an essential requirement for a rural location. Policy DM15 of the 2019 adopted South Lakeland Local Plan Development Management Policies (the DMP) only permits dwellings in the open countryside for those working in agriculture or rural businesses who need to live at or near to their place of work where there is a demonstrable essential need. The policy sets out criteria to be met in order to demonstrate an essential need.
7. Based on the submitted evidence, which was confirmed at the hearing, the area of dispute centres on whether the proposal complies with criteria 1 and 4 of Policy DM15. That is, whether there is an existing functional need for the proposed dwelling, and whether the functional need could not be fulfilled by any other accommodation in the area which is suitable and available for occupation or conversion by those concerned.

Existing Functional Need

8. The appellant acquired the appeal site in 2002 in connection with his farrier business. In 2010, planning permission¹ was granted for an '*agricultural building, loose boxes and menage for farrier business*'. The building has been constructed and is used as the appellant's workshop. The three stables have also been constructed. The appellant currently operates an on-site day surgery and a visiting farrier service to treat horses at their owners' premises mainly in South Lakeland, the Furness Peninsula and the south and central Lake District National Park areas but also further afield.
9. The appellant's evidence sets out that the business has proved to be increasingly successful with demand for the appellant's expertise in the treatment and convalescence for severe and long-term equine illness and disorders, in particular laminitis. This condition can take several weeks to treat through remedial shoeing and other treatments. Other equine conditions such as canker, abscesses and lameness are treated, which also require ongoing treatment and rehabilitation over a period of time. The appellant has established a working relationship with local vets, which involves receiving referrals and working with them to treat hoof and leg conditions including undertaking invasive surgical procedures. The appellant also undertakes post operative rehabilitation and dietary care of horses.
10. Based on the evidence presented, including letters of support from customers and local vets, it is clear that the appellant's farrier business is a well-respected enterprise that has been operating for a considerable period of time.

¹ Permission reference SL/2010/0290

11. The appellant identifies that often the premises he visits do not provide an ideal environment in which to undertake invasive procedures, or for the rehabilitation period. Poor lighting, lack of water, unstable and/or unclean surfaces and unsupervised grazing are highlighted. He therefore wishes to provide for the treatment of horses in a permanent location with appropriate facilities. As treatments can take several weeks to complete, horses would be kept in the stables at his premises. The appellant argues that a permanent on-site presence is required to undertake the necessary care of the sick horses.
12. Based on the evidence and what I heard at the hearing, I am persuaded that there are a range of conditions, including the more severe cases of laminitis, which would require intensive 24 hour monitoring and treatment for a period of time to ensure that the condition does not progress or worsen to a stage where complications may set in or which may pose a risk to the life of the horse. While CCTV would provide an indication of a horse's general posture, it would not identify a horse's vital signs such as breathing or temperature which can indicate a reaction to a sedative or an infection. I am therefore satisfied that the regular monitoring would need to be done in person rather than relying solely on CCTV. Having a presence on the same site as where the horses would be treated would enable the appellant to monitor the conditions or injuries, respond to emergencies where a horse's health has rapidly deteriorated and to administer appropriate medication and treatment.
13. The appellant also argues that a permanent presence on site is needed to manage security issues that would arise from having horses resident at the site. In this respect, I note the difficulties that arose with the appellant's insurance when he previously trialled treating horses as resident at the site as opposed to day patients. There is the potential for security to be managed with appropriate surveillance equipment and security measures. However, I can appreciate the importance of providing a secure environment involving an onsite presence to give owners confidence to leave their horses given the high monetary and/or emotional value which they have.
14. From the submitted evidence and what I heard at the hearing, I am satisfied that if residential care of horses at the site is provided then a 24 hour on-site presence is required. Furthermore, the responsive nature of the service means that demand is unpredictable, and so there would be an operational need to have a presence available on site at most times.
15. However, criterion 1 of Policy DM15 of the DMP requires there to be an **existing** (my emphasis) functional need for the proposed dwelling. I note the view of the Council's advisor² that '*there is a clearly established existing functional need at Beckside Smithy when horses and ponies are kept on the site for treatment*'. However, that is qualified in a subsequent communication between the Council and its advisor, where it is stated that at the present time, the appellant does not appear able to demonstrate that there is a significant functional need for a worker to be required to live at the site as few horses are currently retained on site.
16. The appellant contends that the change to the business that the proposed dwelling would enable is that the procedures and treatment would take place at the site rather than at the horse owners' premises. In other words, the

² Report on a proposed permanent rural worker's dwelling, AG & P Jackson, October 2020

specialist treatment of horses would not be a new activity and the dwelling would therefore relate to an existing business.

17. The appellant has provided notes on 31 cases treated during the period June to November 2020 which it is claimed would have benefitted from residential treatment at the site rather than at the owners' premises. Although this information was prepared to support a previous application for a dwelling at the site, the appellant confirmed at the hearing that the type and number of cases that he treats remains similar. There is some uncertainty as to whether all of these cases would have translated into actual requests for residential treatment and rehabilitation. Nonetheless, the evidence presented does indicate a demand for the residential treatment and rehabilitation of a range of conditions that would require a 24 hour on-site presence for a sizeable proportion of the year.
18. However, while horses are currently brought to the site for treatment, these are as day patients rather than for residential care. It was confirmed at the hearing that the appellant does not undertake treatment or monitoring of horses during the night-time period. Notwithstanding that the evidence shows a demand for a fully serviced facility at the site that would enable the treatment and longer term care of horses in a suitable environment, this service is not currently taking place. The business as currently operating does not therefore have an existing functional need for a dwelling at the site. As such, there would be conflict with criterion 1 of Policy DM15 of the DMP.

Other Accommodation

19. The Council makes the point that no clear justification has been provided to demonstrate that the appellant could not purchase accommodation in one of the nearby settlements. However, I am mindful of the prices of properties identified in the searches undertaken by the Council and the business's financial information that has been presented. In my view, it would be difficult for the business to fund the purchase of a dwelling for sale within the locality without having an adverse effect on its future stability.
20. Furthermore, I am persuaded by the appellant's evidence in terms of the speed at which a sick horse's condition can deteriorate. Accordingly, in my judgement, there would be clear animal welfare benefits in being able to provide a 24 hour presence on site as opposed to an offsite dwelling that was even a relatively short drive away. I am also mindful of the health and safety considerations for the appellant in tending a sick horse at night as a lone worker if residing offsite.
21. Overall, I am satisfied that a functional need could not be fulfilled by other accommodation in the area. Consequently, the proposal would not conflict with criterion 4 of Policy DM15 of the DMP.

Other Considerations

22. The appellant considers himself to be in what is described as a 'catch 22' situation. That is, he cannot demonstrate an existing functional need because horses are not resident at the site. Yet he cannot have horses resident at the site for treatment and rehabilitation as he cannot provide the 24 hour presence that would be required. While a temporary permission would offer the potential to address this 'catch 22' situation, I am mindful of the guidance in the

Planning Practice Guidance which states that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Furthermore, a condition could be imposed that makes a link between the dwelling and the business.

23. As set out above, there would be clear animal welfare benefits associated with the proposal. The overnight care and rehabilitation of horses in a clean environment with a controlled diet where appropriate would likely improve and/or quicken the chances of recovery for at least some of the horses treated by the appellant.
24. I noted on my site visit that while investment has been made in the facilities at Beckside Smithy, some aspects have not been completed, notably the menage. However, I can appreciate the appellant's reluctance to invest in this facility due to the uncertainty about the residential occupancy at the site. It is clear from the evidence and what I observed that thought has been given to the layout of the site and how the onsite residential care and rehabilitation of horses would be undertaken.
25. Furthermore, no concerns are raised by the Council in terms of the financial viability of the business and there is nothing before me to indicate that it would not remain viable for the foreseeable future. Indeed, the Council's advisor anticipates that if the appellant is able to build on his expertise in dealing with the treatment of horses for foot and leg injuries then the finances of the business should improve. In my view, the provision of a permanent dwelling would provide certainty to this rural business to enable its further development, thereby supporting the principle of a prosperous rural economy as envisaged by paragraph 84 of the Framework.

Other Matters

26. My attention has been drawn to two appeal decisions³. One case related to a dwelling at a site used for the breeding of horses, rather than the treatment of sick horses which, on the basis of the available evidence, requires a different level of care. In the other case, the accommodation was for additional farm workers. In this current appeal proposal, the dwelling would be for the main specialist care giver rather than support workers. On the basis of the available evidence therefore, I do not find these examples to be directly analogous to the proposed development. In any event, I have evaluated the appeal proposal on its individual planning merits.

Balance and Conclusion

27. I have found that there would be conflict with criterion 1 of Policy DM15 of the DMP as the business as currently operating does not have an existing functional need for a dwelling at the site. In this respect there would also be conflict with Policy CS1.2 of the CS. Consequently, I conclude that there would not be an essential need for a rural worker's dwelling on the site, having regard to local policies and national guidance which seek to restrict development in the countryside. Nevertheless, there are a number of other considerations with this case to which I give significant weight.

³ Appeal references APP/W/1145/W/17/3175485 and APP/L3245/W/16/3152229

28. The proposal would allow for a better standard of care to be given and so there would be clear animal welfare benefits. It would also enable the further development of an enterprise which provides a service in support of rural activities, and which is clearly needed. The proposal would therefore support the growth and expansion of a rural business.
29. I am also mindful of the fact that the Council has not identified any other harm that would result from the proposal, including to the character and appearance of the countryside. Having viewed the site, I would agree with this position. The proposed dwelling would be well related to the existing buildings on the site and would appear as part of the small cluster of dwellings located here. Its scale, design and materials would be appropriate for its context.
30. The Framework states that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. In my judgement, in this particular case, these other material considerations are of sufficient weight to outweigh the conflict with criterion 1 of Policy DM15, and given that there would be no other harm. For the above reasons therefore, I conclude that the appeal should be allowed.

Conditions

31. I have considered the conditions suggested by the Council and have amended the wording of certain conditions in the interests of precision.
32. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans.
33. In the interests of the character and appearance of the area, a condition is necessary to ensure that the dwelling is constructed in the materials shown on the approved plans. For the same reason and also for biodiversity interests, a condition is necessary to secure the planting shown on the landscaping plan and replacement planting where necessary. A condition to address land contamination risks is necessary in the interest of public health and safety and the environment. During the construction phase, it is necessary to restrict the hours of operation in the interests of the living conditions of neighbouring occupiers. To reduce the risk of flooding, a condition is necessary to ensure that the foul and surface water drainage scheme is implemented. A condition restricting the occupancy of the dwelling to a person working at Beckside Smithy and their dependants is necessary to ensure that the dwelling supports the business needs.
34. Given the site's location in the countryside, in the interests of the character and appearance of the area, it is necessary to remove rights for works permitted to take place without the need for express planning permission on a selective basis referring to classes of the GPDO⁴ concerned with the enlargement, improvement or other alteration; additions etc to the roof; porches; buildings etc incidental to the enjoyment of a dwellinghouse; and means of enclosure.
35. The Council has suggested a condition requiring the provision of an electric vehicle charging socket. The Building Regulations now include a requirement for the installation of electric vehicle charge points in new homes. The Planning

⁴ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Practice Guidance sets out that conditions requiring compliance with other regulatory requirements such as Building Regulations will not meet the test of necessity and may not be relevant to planning. The Council also suggested a condition requiring the submission of a sustainable drainage management and maintenance plan. However, given the nature of the drainage proposed, this condition is not necessary or relevant to the development. I have not therefore imposed these conditions.

F Wilkinson BSc (Hons), MRTPI

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Chris Milby

Ms Jackie Dent

Mr Tim Corry Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Elizabeth Arnold Principal Planner

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location and Ownership Plan BS/SLAOP/1 Rev A
 - Site Levels 1776/01A
 - Proposed Site Block Plan BS/PSBP/1 Rev B
 - West Elevation BS/PWE/1 Rev B
 - South Elevation BS/PSE/1 Rev B
 - North Elevation BS/PNE/1 Rev B
 - East Elevation BS/PEE/1 Rev B
 - Proposed ground floor BS/PGF/1 Rev B
 - First floor plan BS/PFF/1 Rev B
 - Proposed eastern hedge planting scheme BS/PHP/1
 - Materials palette BS/MP/1
3. The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan numbers BS/PWE/1 Rev B, BS/PSE/1 Rev B, BS/PNE/1 Rev B, BS/PEE/1 Rev B and BS/MP/1. The approved materials shall be retained thereafter.
4. No work for the construction of this development, including site preparation, earthworks and start-up of machinery shall take place on the site, except between the hours of 8am to 6pm Mondays to Fridays and 8am to 1pm on Saturdays and at no time on Sundays, Public or Bank Holidays.
5. Prior to the first occupation of the dwelling the proposed hedgerow as shown on plan BS/PHP/1 shall have been planted. Any trees which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees of similar size and species to those originally required to be planted.
6. If any contamination is found during the course of construction of the development that was not previously identified, it shall be reported immediately to the Local Planning Authority. No further development (unless otherwise expressly approved in writing by the Local Planning Authority) shall be carried out until a method statement detailing how the contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The approved method statement shall be carried out before the development is resumed.

If no such contaminated material is identified during the construction of the development, a statement to this effect shall be submitted in writing to the Local Planning Authority prior to the first occupation of the dwelling hereby permitted.
7. The drainage for the development hereby permitted shall be carried out in accordance with the principles set out in the submitted Foul & Surface Water Drainage Design Drawing BS/PSBP/1 Rev B, and shall be fully implemented

prior to the first occupation of the dwelling hereby permitted. No surface water shall be permitted to drain directly or indirectly into the public sewer.

8. The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working at Becksid Smithy, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development as specified in Classes A to E of Part 1 and Class A of Part 2 of Schedule 2 of that Order shall be carried out.