



Appeal Decision

Site visit made on 22 August 2023

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2023

Appeal Ref: APP/B2355/W/23/3315278

Pewitt Hall Farm, Back Lane, Accrington BB5 2DZ

- 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 J Mohammed against the decision of Rossendale Borough Council.
 - The application Ref 2022/0405, dated 4 August 2022, was refused by notice dated 23 January 2023.
 - The development proposed is an agricultural building.
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Decision

1. The appeal is allowed and planning permission is granted for an agricultural building at Pewitt Hall Farm, Back Lane, Accrington BB5 2DZ in accordance with the terms of the application, Ref 2022/0405, dated 4 August 2022, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Mohammed against Rossendale Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. The Council has cited a court judgement¹ within its appeal statement. A copy of this judgment has not been submitted, however the Council has provided the Case Comment summary from the Journal of Planning and Environmental Law. I have taken this submission into account in the determination of this appeal.

Main Issues

4. The main issues are:
 - whether the proposal is consistent with the objectives of local and national planning policies relating to development in a rural area; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Development in rural areas

5. The appeal relates to Pewitt Hall Farm, which comprises of 7.8 hectares of pastureland within the open countryside, upon which the appellant keeps up to

¹ Broughton V SSE [1992] 1 WLUK 506; JPL 550

- 150 lambs. The farm currently consists of a two-storey farmhouse and a cluster of single storey outbuildings.
6. The appeal therefore proposes a new agricultural building with a floor area of 300m², which will house the appellant's lambs. Specifically, the building will be used for the fattening and corralling of lambs before they are taken to the abattoir, where the appellant states lambs are expected to be delivered dry.
 7. There is no dispute between the parties that the erection of an agricultural building is an appropriate form of development on an existing agricultural holding. Furthermore, the Council has not raised any issue in respect of whether there is an agricultural need for a new building at the appeal site, or as to whether the building would be used for agricultural purposes.
 8. There is however a disagreement between the parties as to whether an agricultural building of this specific size and design is required for the agricultural needs of the appellant. The Council argues that the proposed building is unnecessarily large, in terms of both its footprint and height, and no evidence has been provided to justify this size of building. Furthermore, the Council considers that the building is poorly designed for the housing and fattening of lambs, as they require very good ventilation. It therefore recommends that an open sided elevation be provided. As a result of the above, the Council considers that the proposal fails to minimise the visual impact on the rural character of the area and the countryside.
 9. The appellant however contends that there is no requirement in local or national planning policy to demonstrate 'agricultural need', or for the size of the proposed building to be justified. The appellant has submitted appeal decisions in support of this view, as well as officer reports where the Council has previously taken this approach when justifying other permissions for agricultural buildings in the open countryside. The appellant also states that the design of the building is no different to many others approved by the Council, and that the purpose of the building is to keep the lambs dry before they are taken to slaughter. Notwithstanding this, it is argued that ventilation can be provided at floor level, at eaves level and through the main doors.
 10. Policy SD2 of the Rossendale Local Plan (2021) (LP) permits new development within the countryside where there is a specific need in that location, and where the development enhances the rural character of the area. Furthermore, paragraph 84 of the National Planning Policy Framework (the Framework) supports economic growth in rural areas by seeking to support sustainable growth and expansion of all types of businesses in rural areas, including through well designed new buildings.
 11. There is no explicit requirement in local or national policy for the size or design of the proposed agricultural building to be justified in terms of its use and functionality. Even if there were, the Council's evidence does not persuade me that there would be grounds to withhold permission on the grounds of lack of agricultural need. I therefore consider that the proposed agricultural building is an acceptable form of development in principle within the open countryside.
 12. In reaching this view, I have taken into account the previous decisions made by this Council, as well as the findings of a previous Inspector relating to an

appeal decision² in a neighbouring district, which have been brought to my attention. Furthermore, I have also borne in mind the appellant's comment that the footprint of the proposed building would enable the housing of more sheep in the future, to allow the business to grow, and I consider this to be a reasonable argument which carries some weight in favour of granting permission.

13. I therefore conclude that the proposal would not conflict with policy SD2 of the LP or the Framework in terms of their objectives relating to development in rural areas. However, to conclude on the compliance with the development plan as a whole, it is necessary to consider the effect of the proposal on the character and appearance of the area.

Character and appearance

14. Pewitt Hall Farm is situated in a relatively isolated location, accessed by a long private road off Back Lane. The Accrington Bypass (A56) runs to the east of the appeal site and there are a number of Public Rights of Way (PRoW) within the vicinity of the site, with the nearest being Footpath 14-2-FP37 (the footpath) to the north.
15. The appeal site is located on a raised plateau, with gentle undulations, and this provides long distance views in all directions. To the south the land slopes relatively steeply downwards, reducing the prominence of the building from short distance views at this lower land level. Due to the upland location, the landscape is largely open, aside from field boundaries and several coppices of trees.
16. The Council does not challenge the appellant's assertion that the appeal site is located within the 'Rossendale Hills' landscape character area, as defined within the Lancashire County Council Landscape Character Assessment (2000) (LCA). The appellant has provided the relevant extracts from the LCA with their submission. The LCA identifies a number of distinctive characteristics within the Rossendale Hills landscape character area, including the undulating landscape with a network of small remote farms, with the overall impression being of a somewhat derelict landscape with rush infested pastures and tumbled stone walls. The dense network of footpaths is also highlighted as a particular cultural feature of the area.
17. I observed on my site visit that the appeal site, with its relatively isolated location, gentle undulating landscape and nearby PRoWs, follows a number of the characteristics described within the LCA.
18. The proposal would change the appearance of the site through the introduction of a new building. However, being situated within a cluster of existing buildings, the development would ensure that the farm still appears as an isolated and remote group of buildings on the wider landscape, which is a characteristic of this landscape character area. Furthermore, the proposed building would be constructed of external materials commonly found in this area and would not represent an alien or discordant feature.
19. The development would be highly prominent from the nearby footpath, and it would be visible from relatively long distances within the surrounding landscape, due to the topography of the area. The building would also be

² APP/Z2315/W/17/3170899

visible from sections of the A59, albeit somewhat screened by the farmhouse, and the vegetation that runs along the side verge of this dual carriageway.

20. I noted on site that there are a number of agricultural buildings that can be seen in the wider landscape, with some of these prominently positioned and viewed from nearby public footpaths. These buildings are not particularly harmful in landscape or visual terms, being reflective of the rural character of the area and a working farming landscape. Furthermore, whilst the proposed building would be clearly visible from the nearby footpath, this would be for a relatively short section when travelling from the A59 as users of the footpath will have quickly passed the building. When approaching from the opposite direction the building would be visible for a significantly longer period. Nevertheless, the structure would be clustered with the existing buildings on this site, including the existing farmhouse, which can currently be seen from this footpath.
21. In light of the above, the proposed building would not be visually obtrusive, and given the open aspect of the surrounding landscape the development would not result in a sense of enclosure for users of this nearby footpath. Views of the development from other PRoWs would be from greater distances, and again the visual impact would be mitigated by its siting close to the existing buildings and structures, as well as the proposed materials to be used on its external finish.
22. The appellant has submitted a table to demonstrate that similar sized, and in some cases larger, agricultural buildings have been allowed at appeal in the area. Conversely, the Council has submitted a table of dismissed appeals, which includes a number of buildings that are smaller than the appeal proposal. I have not been provided with all the details of these cases. Nevertheless, the tables clearly demonstrate that each application must be judged on its own merits, and with particular regard to the site-specific circumstances when assessing the impact upon the character and appearance of an area. As such, the various appeal decisions have not been determinative in this case.
23. For the reasons set out above, the development would not appear unduly dominant or incongruous within the wider area, nor would it undermine its landscape character. I therefore conclude that the proposal would not harm the character or appearance of the area. Consequently, it would accord with the requirements of Policies ENV1 and ENV3 of the LP regarding character and appearance, and landscape character. The proposal would also meet the objectives for conserving and enhancing the natural environment in chapter 15 of the Framework.
24. I note the Council's reason for refusal includes Policy ENV4 of the LP. The wording in this policy does not relate to matters of visual impact and rural character, and I therefore find no conflict with this policy.

Other Matters

25. The Council has raised the issue of the viability, suggesting that if this enterprise is not viable and the business fails, a large unused building will be left vacant in the open countryside, or alternatively turned into a less than suitable use.

26. As mentioned in the "Procedural Matter" section of this decision letter, the Council has referred to case law where the Court upheld an Inspector's decision to take commercial viability, risk and assured agricultural need into account when considering an appeal for a barn on a horticultural smallholding. The Council has not provided any commentary as to how this case law is directly relatable to the appeal proposal in terms of the similarities and the financial figures involved in respect of viability.
27. Nevertheless, upon my review of this submission I consider that the circumstances are not comparable to the current appeal proposal. In the judgment provided the Inspector was considering whether the agricultural need for the building outweighed the resulting planning harm in respect of the intrusion and harmful views within the open countryside. The appeal before me is different as, for the reasons detailed above, I have found that the appeal proposal would not result in any material landscape harm.
28. In any event, no evidence has been provided to demonstrate that the Council requested, or has been provided with, any financial information from the appellant in respect of the viability of the existing business when assessing the planning application. As such, there is no substantive evidence to support the Council's assertion that the appellant's business is potentially unviable.
29. I note that references have been made by the Council's Agricultural Consultant in respect of the construction costs for the proposed building, and estimated financial returns from the business. However, these are purely speculative and not based on facts or actual figures relating to the appellant's farming business. I therefore consider the Council's arguments with regard to potential financial viability issues to be unsubstantiated and not supported by any genuine evidence. This issue has therefore been given very limited weight in my consideration of this appeal.
30. With regard to the future use of the building if the business was to fail, this is a potential risk and consequence of all proposed new agricultural buildings. There is rarely a guarantee that any rural business, whether agricultural or otherwise, will not potentially fail at some point in the future. In any case, and as detailed above, the Council has not provided any substantive evidence to support its assertions regarding the viability of the appellant's business. Furthermore, the Council has not raised any objection in respect of whether there is currently an agricultural need for a new building at the appeal site, or made any suggestion that the proposed building will not be used for agricultural purposes. As such, any potential future use of the building if the business fails is not a determining issue in the consideration of this appeal for an agricultural building.

Conditions

31. The Council has provided a list of suggested planning conditions, which I have considered against paragraph 56 the Framework, and advice contained in the Planning Practice Guidance.
32. In addition to the standard time limit condition (1), I have attached a condition specifying the approved plans to provide certainty (2), as well as including a condition which requires the development to be implemented in accordance with the material details shown on the approved plans (3), in order to safeguard the character and appearance of the area.

33. A pre-commencement condition has been attached which requires a scheme of intrusive investigations to be carried out on site in relation to the risks posed to the development by past coal mining activity in the area. The condition requires any remediation and mitigation measures recommended within this scheme to be implemented, and a verification report provided to validate that the agreed measures have been undertaken (4). It is acknowledged that the Coal Authority have raised no objection to the appeal proposal, however the Council's Senior Environmental Health Officer has commented that further investigation works are required. In the interest of public safety, I therefore consider this condition to be both reasonable and necessary.
34. The Lancashire Badger Group have commented that their database identifies 8 setts within a 2km radius of the site, and therefore a condition requiring reasonable avoidance measures in relation to badgers is attached (5). Additionally, a condition has been added requiring the submission of a scheme for the provision of biodiversity net gain at the site (6). Both these conditions are considered to be necessary in respect of the requirements of Policy ENV4 of the LP, which requires developments to protect and enhance biodiversity, and protected species.
35. The Council suggested a condition requiring a landscaping scheme to be submitted, including the planting of native trees on site to screen the development. However, I have concluded that the proposed building would not harm the character and appearance of the area. Furthermore, the planting of trees in this upland location has the potential to draw attention to the appeal site and the proposed development. As such I do not consider a landscaping scheme to be necessary to make this development acceptable, and therefore this condition has not been attached.

Conclusion

36. For the reasons given above, the proposed development would accord with the development plan when taken as a whole and there are no material considerations that indicate it should be determined other than in accordance with it. I therefore conclude that the appeal should be allowed.

R Major

INSPECTOR

Schedule of Conditions

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this permission.
2. The development shall be carried out in accordance with the following approved plans:
 - JM.230722A
 - JM-23-07-22
3. No materials shall be used on the external elevations or roof of the proposed development other than those referred to on the approved plans (dwg ref: JM-23-07-22).
4. No development hereby approved shall commence on site until an intrusive investigation of the risks posed to the development by past coal mining activity, including the potential source of gas, has been carried out on site and a report detailing the results of the intrusive investigation, along with any remediation works and/or mitigation measures required to address land instability, or gas issues, arising from the coal mining legacy, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the remediation works and/or mitigation measures detailed within the approved report.

Prior to the development hereby approved being first brought into use, a verification report, which validates that all the required remedial works and/or mitigation measures undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority.

5. Throughout the construction phase of the development hereby approved, the following Reasonable Avoidance Measures in relation to badgers shall be adhered to:
 - i. Any trenches or deep pits that are left open overnight shall be provided with a means of escape for badgers by way of a plank of wood set at no more than a 45 degree angle to the surface;
 - ii. The storage of topsoil or other soft building materials shall be inspected daily before work commences;
 - iii. Chemicals should be stored away securely so they cannot be accessed or knocked over by any inquisitive badgers; and
 - iv. Open pipework with a diameter of more than 120 mm should be covered at the end of each working day to prevent badgers entering.

6. No above ground construction work shall commence on the development hereby approved until a scheme for the provision of biodiversity net gain measures on the site, including a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out thereafter in accordance with the approved scheme for the lifetime of the development.

***** END OF CONDITIONS*****