



Appeal Decision

Site visit made on 24 May 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/V2635/C/22/3301921

Land at Wilks Place, 34 The Drove, Barroway Drove, Norfolk

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Linda Pearce against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice, numbered 20/00053/BOC, was issued on 17 May 2022.
- The breach of planning control as alleged in the notice is failure to comply with condition imposed on a planning permission ref 18/01957/F granted on 1 August 2019.
- The development to which the permission relates is: Change of use of land from ostrich farm to ostrich farm, livery, dog walking field, storage of vintage vehicles and continued temporary retention of two mobile homes.
- The condition in question is no 1 which states that: The permission shall expire on 28.7.2021 and unless on or before that date application is made for an extension of the period of the permission and such application is approved:
 - (a) The mobile homes shall be removed from this site.
 - (b) The use of the land for that purpose shall be discontinued.
 - (c) There shall be carried out any work necessary to reinstate the application site to its condition prior to the mobile homes being brought onto the site.
- The notice alleges that the condition has not been complied with in that: it appears to the council that the above breach of planning control has occurred within the last ten years. Condition 1 was imposed in order that the Local Planning Authority may retain control over the development and allow the applicant to establish a viable rural enterprise in accordance with paragraph 83 of the NPPF and Policy DM6 of the SADMPP. No application was made for an extension of the period of the permission on or before the 28.7.2021. A more recent application has been withdrawn.
- The requirements of the notice are to:
 - 1. Remove the mobile homes from the Land.
 - 2. Cease the use of the Land for livery, a dog walking field, the storage of vintage vehicles and the siting of mobile homes.
 - 3. Reinstall the Land to its condition prior to the mobile homes being brought onto the Land.
- The period for compliance with the requirements is: six months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Act as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- **Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**

Preliminary Matters

1. The land to which the enforcement notice relates is the address given in the banner heading of this decision letter. There are several references to the appeal site being named as 'Bumblebee Farm' although these appear to relate to an informal change in the name of the site. As such, for the purposes of this decision letter, I have used the details of the original address cited by the Council on the notice.

The Notice

2. At Step 5 of the notice, the requirements set out '2. Cease the use of the Land for livery, a dog walking field, the storage of vintage vehicles and the siting of mobile homes'. However, requirement (b) of the planning permission states 'The use of the Land for that purpose shall be discontinued'. If I were minded to uphold the notice, the requirement as currently worded could be more onerous than the wording of the condition attached to the planning permission. To my mind, the purpose of remedying the breach is achieved by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. I therefore take the view that this matter can be addressed by varying the terms of the requirements without causing any injustice to the appellant or Council.

Main Issues

3. The main issues are:-
 - i) whether there is an essential need to accommodate a rural worker on the site and the financial viability of the appellant's business; and
 - ii) whether the proposal would comply with local and national planning policy which seeks to steer development away from areas at the highest risk of flooding.

Reasons

4. In appeals against enforcement notices alleging a breach of condition the deemed application contained within the ground (a) appeal is a retrospective one, to carry out the original change of use without complying with the particular condition enforced. It is only the condition which is enforced against which can be discharged. It is not open to an Inspector to review any of the other conditions imposed on the original planning permission, because to do so would widen the scope of the enforcement notice. Allowing such an appeal would result in the grant of a new planning permission, subject to **all** the other conditions on the old permission and any new condition or conditions which can fairly and reasonably be substituted.
5. In this instance, Condition 1 granted a change of use of the land from an Ostrich Farm to an Ostrich Farm, livery, dog walking field, storage of vintage vehicles and the continued temporary retention of two mobile homes. The reasoning stated by the Council for the imposition of Condition 1, is stated to be *'in order that the Local Planning Authority may retain control over the development and allow the applicant to establish a viable rural enterprise in accordance with Paragraph 83 of the NPPF and Policy DM6 of the SADMPP'*.
6. Condition 1 goes on to set out the steps that are required to be taken if no further permission for the change of use is granted. As such, if the appeal under ground (a) were to be a success, the effect of this would be a grant of planning permission for the change of use for an indefinite period (subject to the remaining conditions 2-9). I am therefore required, in the first instance, to consider the appeal before me on the basis of whether the change of use of the land should be granted open-endedly. However, it would be open to me as part of this appeal to consider whether any new conditions are required and this could include the consideration of a further time restricted condition for the change of use sought.

7. The rural enterprise occupies a semi-rural location within the settlement of Barroway Drove, a '*Smaller village and hamlet*' for the purposes of the defined settlement hierarchy of CS Policy CS02 where development is limited to specific identified needs. Policy DM3 of the Site Allocations and Development Management Policies Plan (2016)(SADMPP) has similar aims and advises that new development in the designated Smaller Villages and Hamlets will be limited to that suitable in rural areas.
8. SADMPP Policy DM6 concerns the housing needs of rural workers. Proposals for occupational dwellings are required to demonstrate that the intention to engage in farming, forestry or any other rural-based enterprise is genuine, reasonably likely to materialise and is capable of being sustained. In addition, a proposal needs to show that the needs of the rural enterprise require one or more of the people engaged in it to live nearby. Specific criteria define the circumstances whereby a permanent or temporary occupational dwelling for a rural worker will be allowed. For a permanent dwelling, the following criteria must be satisfied:-
 - a) *there is a clearly established existing functional need, requiring occupants to be adjacent to their enterprises in the day and night,*
 - b) *the need could not be met by existing dwellings within the locality,*
 - c) *the application meets the requirements of a financial test demonstrating that: the enterprise and rural based activity concerned have been established for at least three years, have been profitable for at least one of them and;*
 - i) *are currently financially sound and have a clear prospect of remaining so and;*
 - ii) *the rural based enterprise can sustain the size of the proposed dwelling;*
 - iii) *acceptable in all other respects.*
9. In terms of a functional need, the appellant has set out a number of activities that are carried out by the enterprise. In doing so, it is argued that a permanent on-site presence is required to undertake the necessary care of the animals, to monitor their condition if they are sick or injured, to respond to emergencies where an animals' health rapidly deteriorates and to administer appropriate medication and treatment.
10. The livery part of the business is stated to be for the stabling and grazing of retired and/or rehabilitating horses and ponies. Three stables are present, of which two are used, one by the appellant's horse and another stable for a friend's horse. At the time of my visit, the number of horses and ponies had increased to around four.
11. Whilst older equines may be more prone to illness and injury, no detailed information has been provided as to the nature and extent of care and rehabilitation that is required in relation to the animals currently kept on site. Although a horse's health can deteriorate rapidly in instances of colic and laminitis and serious health problems can arise, it appears to me that these are references to potential medical conditions and illnesses that may or may not arise in the future. There is little information before me concerning the prevalence of such medical problems in the past and their likely frequency of

occurring at some future date. References to veterinary support for the need for a person to be on-site to care for horses with medical issues and in periods of rehabilitation are vague and uncorroborated.

12. To my mind, whilst I accept that horses and ponies may become unwell from time to time and some medical emergencies may arise or there may be a need for greater supervision following surgery, there is little information before me to show that regular attendance outside of normal working hours would be required as part of the day to day operation of the livery business. The on-site attendance of a vet may arise during unsociable hours, however, I consider it is likely that the majority of visits would be during the day. In instances whereby overnight attendance was required for medical purposes, temporary overnight accommodation arrangements could be made available such as through the use of other buildings present on the site.
13. Whilst the appellant has expressed an intention to work with local rescue providers and increase the number of equines at the site, there is little evidence to show that this has been explored as a genuine option for business growth now that it is capable of being achieved given the restriction on number of equines set by condition 4 to a total of five horses at any one time.
14. Whilst I understand that having an on-site presence may enable closer monitoring of animals and a more rapid response than would be possible from living elsewhere and it may have security benefits, given that few horses are currently retained on site, the restriction in numbers of horses that are permitted to be kept on site at any one time and the limited stabling facilities, any operation of the business is therefore limited in scale and I am not satisfied that such a small-scale operation would necessitate an on-site presence for 24 hours a day and for 365 days a year.
15. Similarly, the number of chickens, bantams and other fowl are low and there is little information as to why tasks associated with rearing young chicks could not be carried out off-site or by the use of automated systems to safeguard against loss of humidity.
16. On the evidence before me concerning the welfare of animals, given the limited number of horses and poultry on the site, I conclude that there is not a clearly established existing functional need relating to equine and poultry care and management that requires occupants to be adjacent to their enterprise during the day and night.
17. No justification has been provided to demonstrate that tasks including the cleaning of stables and fields, bagging up and sale of manure, growing and selling of plants and hay, field rotation, sale of second hand horse equipment, could not be undertaken during daytime hours.
18. Reference is also made to the need for a permanent security presence at the site due to the high value nature of the classic car storage part of the enterprise. However, little information has been provided regarded security breaches that have occurred in the past which would assist in determining the likelihood of similar instances occurring in the future, nor that other security measures such as alarms and CCTV have failed to be successful or pose a real disruption to neighbouring occupiers. Despite the appeal site's rural location, given the presence of nearby dwellings, a degree of natural surveillance already exists to deter instances of crime. Although the appellant has cited cost

effectiveness as a reason for a permanent on-site presence, in the absence of any financial information, there is no cogent evidence to support this view.

19. Furthermore, whilst I have noted the appellant's intention to expand the business through the storage of additional vehicles, only one vehicle was being stored at the time of my site visit and Condition 8 of the planning permission restricts the storage of motor vehicles to a maximum of five at any one time. There is no evidence before me to demonstrate that this part of the business is capable of being scaled up, nor that it is necessary and likely for car owners to collect and return their cars during unsociable hours.
20. Accordingly, based on the evidence, I consider that it has not been demonstrated that there is a clearly established existing functional need that requires a person to be adjacent to the enterprises in the day and night. To this extent the appeal scheme therefore fails to satisfy requirement 3(a) of SADMMP Policy DM6.
21. Even if it had been shown that there was a functional need, no information has been provided to show that existing dwellings within the locality would not be capable of meeting this need. The appellant indicates that '*all money is tied up in the farm*', however, no financial information has been provided to substantiate this view. The appeal scheme therefore fails to satisfy requirement 3(b) of SADMMP Policy DM6.
22. It is common practice for applicant's seeking to establish that it is essential for a rural workers' dwelling to provide supporting evidence of business viability by means such as a business/agricultural appraisal, business accounts showing income and expenditure and/or profit and loss accounts over recent years and business plans forecasting future performance. However, the appellant has not provided me with any of these documents as part of this appeal. The financial documents submitted by the Council as part of a previously withdrawn application for planning permission¹ have not been confirmed by the appellant to be relevant for the purposes of this appeal. Notwithstanding the intentions of the appellant, I find that it has not been shown to the satisfaction of the financial test requirements of paragraph 3(c) of SADMPP Policy DM6 that the enterprise is financially sound and has a clear prospect of remaining so in the future.
23. Accordingly, having regard to the requirements of SADMPP Policy DM3, I find that paragraphs 3 (a), (b), and (c) are not met and the appeal scheme fails to satisfy the requirements for a permanent rural worker's dwelling in the countryside.
24. SADMPP Policy DM6 also sets out the circumstances when a temporary dwelling should be allowed to support rural based activities on a temporary basis. However, in addition to requiring the requirements of 3(a) and (b) to be satisfied, it is also necessary to show clear evidence of a firm intention and ability to develop the enterprise concerned and an application needs to be supported by clear evidence that the proposed enterprise has been planned on a sound financial basis.
25. My findings above in relation to SADMPP Policy DM6 paragraph 3(a) and (b) would also apply here when considering a temporary consent. In addition,

¹ Planning Reference: 22/00097/F

whilst I have noted various aspirations of the appellant to expand the rural enterprise, as discussed above, there is little evidence to substantiate that this would be achieved and to my mind, the evidence does not point to the enterprise being planned on a sound financial basis. For these reasons, the appeal scheme fails to satisfy the requirements of paragraphs 5(a), (b) and (c) of SADMPP Policy DM6 in relation to temporary occupational dwellings.

26. Overall, whilst it would clearly be more convenient for the appellant and her family to continue residing on site, the submitted evidence leads me to the view that the appeal scheme does not satisfy the requirements for a permanent or temporary occupational dwelling set out within SADMPP Policy DM6. It therefore fails to be considered as development that is suitable in a rural area for the purposes of SADMPP Policy DM3. As such, the appeal scheme is contrary to CS Policies CS01, CS02, CS08 and SADMPP Policy DM2. Amongst other things, these policies set out the spatial strategy for the borough and seek to protect and enhance the built and natural environment of West Norfolk whilst facilitating growth in the most appropriate locations. In addition, the scheme conflicts with the aims of paragraph 79 of the Framework which seeks to promote sustainable development in rural areas and locate housing where it will enhance or maintain the vitality of rural communities.

Flood risk

27. The appeal site lies within Flood Zones 2 and 3a together with the Hazard Zone of the Council's Strategic Flood Risk Assessment (2018)(SFRA). A mobile home to be used as a dwelling is classed as a 'More Vulnerable' Use. As such, the Framework requires the sequential and exception tests to be passed.
28. The Framework at paragraph 159 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere, and all Plans should apply a sequential, risk based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by applying the sequential test.
29. Paragraph 162 of the Framework further states that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding. 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, and a sequential approach should be used in areas known to be at risk from any form of flooding. In this case I appreciate that the dwellings are intended specifically for the use of the appellant and her family and are required on site in association with the business and therefore cannot be reasonably located elsewhere in an area of less flood risk, particularly having regard to the built extent of Barroway Drove being at the same level of flood risk. To this extent, the sequential test is deemed as passed by the Council and I see no reason to take a different view.
30. The appellant has provided a site specific flood risk assessment. The Environment Agency (EA) has considered the document and whilst it has not provided an objection this is on the basis that any grant of planning permission should be for a temporary period. I am mindful that the EA also advises that a time limit should be placed on the siting of a caravan so that they are not used for longer than 3 years. In this instance, if temporary planning permission were

to be granted, this would be in addition to previous temporary consents and would thus result in furthering the period of residential occupancy of the site and would be tantamount to granting a more permanent form of planning permission.

31. The site specific FRA sets out that the floor levels of the units are set at 500mm above the existing ground level and the units are anchored securely. However, given the appeal site's location, the SFRA and River Ouse Tidal Hazard Mapping data indicates that in the event of a breach of defences, the site could be subject to flood depths in excess of 2 metres which would far exceed the floor level of the units. During a flood event, there would be significant internal flooding which would put the occupiers at serious risk of danger and members of the emergency services. The EA sets out that the onset of flooding would be unexpected and rapid and as a result there is likely to be little time for occupants to reach a safe refuge area. Although it may be argued that a temporary planning permission may allow for the development to be safe for its lifetime taking account of the vulnerability of its users, the successive grant of temporary planning permissions should be avoided to ensure the scheme does not become a more permanent type of development for which the Planning Practice Guidance is not supportive of the permanent siting of caravans for residential use.
32. Setting aside part (b) of the exception test namely, whether the development will be safe for its lifetime taking account of the vulnerability of its users, part (a) also requires the development to provide wider sustainability benefits to the community that outweigh the flood risk. Notwithstanding that the appeal scheme would provide some support for the local economy, given the limited scale of the enterprise, such a benefit would be limited and it would fall far short of outweighing the flood risk.
33. For the reasons set out above, the information provided has not adequately demonstrated that future occupiers would not be at risk from flooding as such, the scheme would not accord with CS Policy CS08 which directs that proposals in high risk flood areas are of a type that is appropriate to the level of flood risk identified in the SFRA, or that it contributes to the regeneration objectives of the wider sustainability needs of rural communities, or the flood risk is fully mitigated through appropriate design and engineering solutions. In addition, it would conflict with the aims of the Framework in this regard.

Other Matters

34. Planning law requires that applications and appeals must be determined in accordance with the current development plan unless material considerations indicate otherwise. In this case I have had due regard to the requirements of the Equality Act (2010) and the Human Rights Act (1998) with regard to the personal circumstances of the appellant and her family concerning the disabilities of family members.
35. Dismissing the appeal would deprive this family of the opportunity to live on the appeal site and it would be likely to cause worry and stress. However, there is limited information before me which details the likely negative impact on their health and no supporting medical evidence has been provided. Set against this is that the evidence fails to demonstrate that there is an essential existing or future need to have a rural workers' dwelling on the site, that there is limited substantive evidence of alternative homes that could be available nor

compelling explanation regarding why other locations have been discounted. Although the appellant owns the land upon which the mobile homes are sited, this would be a personal benefit in reducing the overall cost of providing housing. As such, I take the view that the family circumstances would not outweigh the conflict with the development plan policies.

36. Whilst I have had regard to the comments of interested parties, a number of which have written in support of the appeal, their comments do not lead me to a different view on the main issues above.

Planning Balance

37. Planning law requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration. In this case I have found that the scheme would conflict with policies of the development plan that relate to the provision of dwellings in the countryside and there would be additional harm arising from the conflict with the Framework on the issue of flood risk. Therefore, whilst there may be benefits arising from the scheme in terms of supporting the rural economy they would not outweigh the substantial weight I attach to the conflict with the development plan and the Framework in this case. For these reasons, I conclude that the appeal under ground (a) should not succeed.

Formal Decision

38. It is directed that the enforcement notice is varied in Schedule 5 by:

- The deletion of the words "Cease the use of the Land for livery, a dog walking field, the storage of vintage vehicles and the siting of mobile homes" and the substitution of the words "the use of the land for that purpose shall be discontinued" in Step 2.

39. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

E Brownless

INSPECTOR