



Appeal Decisions

Hearing held on 8 November 2023

Site visit made on 8 November 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal A Ref: APP/U2750/W/23/3324770

Killingbeck Farm, Red House Lane, Moor Monkton, York, YO26 8JF

- 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 George Roach (Oakland Farms Ltd) against the decision of North Yorkshire Council.
- The application Ref ZC23/01440/FUL, dated 13 April 2023, was refused by notice dated 14 June 2023.
- The development proposed is the erection of an agricultural workers dwelling and garage.

Appeal B Ref: APP/U2750/W/23/3324769

Brecks Farm, Red House Lane, Moor Monkton, York, YO26 8JF

- 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 George Roach (Oakland Farms Ltd) against the decision of North Yorkshire Council.
 - The application Ref ZC23/01442/FUL, dated 13 April 2023, was refused by notice dated 14 June 2023.
 - The development proposed is the erection of an agricultural workers dwelling and garage.
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Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the erection of an agricultural workers dwelling and garage at Killingbeck Farm, Red House Lane, Moor Monkton, York, YO26 8JF in accordance with the terms of the application, Ref ZC23/01440/FUL, dated 13 April 2023, subject to the conditions set out in Annex A.

Appeal B

2. The appeal is allowed and planning permission is granted for the erection of an agricultural workers dwelling and garage at Brecks Farm, Red House Lane, Moor Monkton, York, YO26 8JF in accordance with the terms of the application, Ref ZC23/014402/FUL, dated 13 April 2023, subject to the conditions set out in Annex A.

Application for Costs

3. An application for costs was made by Mr George Roach (Oakland Farms Ltd) against North Yorkshire Council. This application is the subject of a separate Decision.

Background and Main Issues

4. The appeals relate to two farms that form part of a larger agricultural enterprise owned by the appellant. They are both located in the Green Belt and are accessed along the same track leading off Red House Lane. It is not disputed that the proposal would be inappropriate development in the Green Belt.
5. Therefore, the main issues in both appeals are:
 - the effect of the proposal on the openness and purposes of the Green Belt;
 - Whether or not the proposal is an appropriate form of development given location of part of the site in Flood Zones 2 and 3; and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Openness and Purposes of Green Belt

6. Openness is an essential characteristic of the Green Belt. It can be considered as the absence of buildings or development and is not just a visual consideration. Both dwellings would be located on corners of open agricultural fields that are currently devoid of built development and would be outside of the area of screening around the existing poultry buildings. The proposed dwellings would be 2 storey houses with a detached single garage. Notwithstanding the fact that the dwellings may be seen to a certain extent in the context of the nearby poultry buildings, the scale and mass of the dwellings would reduce the openness of the Green Belt.
7. Moreover, the dwellings and the domestic curtilages around them, would result in the expansion of development into what is at present open countryside, and so they would erode the rural character of the area. Whilst visibility from the public realm of the site at Brecks Farm is limited, and for the site at Killingbeck Farm is non-existent, the proposals would still represent encroachment of development into the countryside, which would conflict with one of the purposes of Green Belt as set out in paragraph 138 of the *National Planning Policy Framework* (the Framework).
8. As such, as well as the harm from the proposals being inappropriate development, there is a degree of harm arising from the loss of openness and the proposals would conflict with the Framework and Policy GS4 of the *Harrogate District Local Plan 2014 – 2035 (adopted March 2020)* (LP) which requires proposals for developments in the Green Belt to accord with national policy.

Flooding

9. The proposed dwellings would both be located in Flood Zone 1, but the access track to them, Red House Lane and much of the surrounding area lies in either Flood Zone 2 or 3. A site specific Flood Risk Assessment (FRA) was submitted with the applications. Whilst the dwellings would be flood resistant due to their location, a safe access and egress to the property is needed. Given that these lie outside Flood Zone 1, as set out in the Framework, a sequential test, and potentially an exception test, need to be carried out.
10. As set out below I consider that there is an essential need for a dwelling to be located at each farm. Red House Lane provides access not only to the farms but a number of other properties, as such it is not possible to move this access. Moreover, given the amount of land in the vicinity that lies in flood zone 2 or 3 it would not be feasible to provide an access to the farm that did not pass through flood zone 2 or 3.
11. Consequently, I conclude that it is not possible for the development to be located in an area with a lower risk of flooding and so the sequential test is passed.
12. The FRA indicates that access and egress to the dwellings could be restricted during times of localised flooding. It therefore recommends that future occupiers subscribe to the Environment Agency's early flood warning service, so they are aware of any potential flood situations.
13. It also states that as the road levels along Red House Lane are a minimum of 1.5m above the predicted flood level for the River Ouse, access to the dwelling should still be achievable in a flood situation. In addition, at the hearing, the appellant indicated that in 50 years he had not known any major flooding on Red House Lane.
14. In the light of all of the above, I consider that the proposals would be safe for their lifetime, and there is no evidence to indicate that they would increase flood risk elsewhere.
15. The proposals would support an existing rural business and future occupiers would help support nearby services and facilities and the local economy. In addition, the provision of dwellings on the farms would ensure the ability to provide continuity of care to the birds in the event of a flood. As such, I consider that the proposals would have some wider sustainability benefits, and these outweigh the flood risk. On this basis the exception test is met.
16. Consequently, I consider the proposals would be an appropriate form of development despite the location of the access route being in flood zone 2 and 3 as it complies with national policy in respect of flooding as set out in the Framework.

Other Considerations

17. As well as being located in the Green Belt, both farms are in the open countryside. Policy GS2 of the LP indicates that development in the wider countryside will only be appropriate if permitted by other policies in the development plan or by national policy. Policy HS9 of the LP indicates that to be acceptable in the countryside rural workers dwellings have to demonstrate that there is an essential need for a rural worker to live permanently at or near

their place of work and sets out 5 criteria to be used in determining whether there is such a need. Further guidance is provided in the *Rural Worker's Dwelling Supplementary Planning Document (adopted June 2021)* (SPD).

18. The Framework also indicates that isolated new homes in the countryside should be avoided. However, it states that one of the few special circumstances for permitting such homes is to meet an essential need for a rural worker to live permanently at, or near, their place of work in the countryside.
19. Both farms and the land surrounding them are owned by the appellant and together with three other farms they form part of an agricultural enterprise operated by the appellant. Whilst arable farming takes place on the fields surrounding the farms, the main part of the enterprise is an intensive broiler chicken business. Chicks are brought in at 1 day old and raised for approximately 6 weeks. Both farms have 108,000 chickens in 4 poultry sheds and are accessed from the same track leading off Red House Lane.
20. Of the criteria set out in Policy HS9 it is not disputed that the keeping of that number of chickens at each farm is more than a full time job and so criterion B of the policy is satisfied. Nothing I have seen or read would lead me to come to a different conclusion in this regard. However, whether the proposal meets criteria A, C and D is disputed.

Criterion A: Established existing functional need

21. At present each farm is managed by a farm manager who, due to the bio-security measures necessary as a result of avian flu, solely works on that farm. Production is on an 8-week cycle, staggered between the various farms in the enterprise. Additional help is brought in at the end of the cycle in the form of both contractors and "floating" employees who assist at a farm during the turnaround period and when the chicks first arrive. The proposed houses would provide accommodation for the existing farm managers and their families.
22. The farms have automated systems that control the feed, water, lighting, heating and ventilation, which are all vital to the welfare of the birds. Nevertheless, I was told that regular checks are needed on these, on the birds and on the biomass heater and electricity generator as it was stated that it is common to have problems with the equipment. Failure in these systems can quickly cause stress among the birds.
23. Whilst the majority of the care takes place during the day, at the 2 farms in the enterprise which have a dwelling on site regular checks are routinely carried out in the evening as well. Despite not living on site, I was told at the hearing that if there had been an issue with some of the equipment during the day, non-resident managers will often return in the evening to check that everything is working properly. Nonetheless the more routine "out-of-hours" checks, carried out at the two farms with a dwelling are not undertaken. Moreover, the necessary bio-security measures mean that the resident managers on the other farms cannot carry out such checks on the other farms.
24. The farms have alarm systems that provide warnings when things are not working properly. These include a loud audible alarm as well as an automated telephone calling system. However, on both these farms, as nobody lives on site, the audible alarm provides no assistance out of normal working hours, and so reliance is on the telephone system. At the hearing, I was provided with

evidence which showed that, despite the sophistication of the system, for unknown reasons, this system had failed with catastrophic consequences at Red House Farm, earlier this year.

25. Moreover, such systems cannot cope with every eventuality and the appellant's evidence indicates that if the birds become agitated for any reason it can lead to smother incidents where the birds all crowd together, which can have serious implications on the welfare of the birds without intervention.
26. I was told that the time needed to respond to emergencies varies on the type of emergency, the time of year and the age of the birds. Nonetheless, it is often clearly important that intervention takes place quickly, so a manager living elsewhere would be less well placed to deal with an emergency even if they are aware of it.
27. Whilst the failure of the alarm system may be a one-off, and smother incidents may also be infrequent, it is clear that such incidents do occur in this type of operation and that they can result in the substantial loss of stock. The proposed dwellings would be located close enough to enable future occupiers to hear the alarm, even if the poultry buildings would not be visible from the dwellings.
28. Although the farms currently operate without a dwelling on site, the performance data for them, and the other farm without a dwelling, compares unfavourably with the two farms with dwellings. In addition, the mortality rates are significantly higher. This suggests that these units are not operating as effectively as they should. Even if the farms remain in profit, the business involves a very large number of live animals, and their welfare must be assured to a certain degree.
29. Consequently, I consider there is a clearly established existing functional need for dwellings on both sites, and criterion A of Policy HS9 is satisfied.

Criterion C: Financial Soundness

30. The agricultural enterprise, of which the farms form a part, has been established over 50 years. Accounts were submitted for the last 4 years. These relate solely to the broiler chicken part of the business, rather than the wider enterprise. Although individual accounts for each farm are not produced, the accounts relate to that part of the enterprise that gives rise to the need for the dwellings on the farms.
31. The accounts show that the business is profitable, although profitability has fallen over this period. At the hearing the appellant explained that this resulted from the fact that the last few years have been very challenging for the industry. This was due to the impact firstly of the pandemic on the catering industry, which is a key customer, and secondly due to the large increases seen in fuel and feed prices. Nonetheless, the business has remained profitable, and I see no reason why this would not continue to be the case.
32. Furthermore, it is expected that the provision of dwellings on the farms would improve the performance and reduce the mortality rate at them both, and so would increase their profitability. Whilst I accept this cannot be guaranteed, the evidence indicates there is a strong likelihood that this would be the case.

33. The SPD indicates that the accounts need to show that the enterprise would be able to support a worker living on the site and their wage levels. As the dwellings would be occupied by the existing farm managers, whose wages are already taken into account in the accounts provided, I am satisfied that this is the case.
34. Thus, overall, I am satisfied that the business is financially sound and is likely to remain so, and so criterion C is met.

Criterion D: Other dwellings on the enterprise or in the area

35. Whilst the wider enterprise already has 2 dwellings on other farm units, as set out above, the bio-security measures necessary for avian flu, means it is not possible for employees to move between farms. Nor are they close enough to hear the audible alarm. Whilst there may be a range of properties for sale in the villages in the surrounding area, for the reasons previously outlined, I am persuaded that there is a need for dwellings to be provided within earshot of the audible alarm on each farm. This points to the need for a dwelling on the site, not in any of the surrounding villages. In addition, the farms have no buildings that would be suitable for conversion to a dwelling.
36. As such, I consider that criterion D is satisfied.

Size of the dwelling

37. Although Policy HS9 does not specifically refer to the size of the dwelling, the supporting text indicates that rural workers dwellings should be of a size commensurate with the established functional requirement. The SPD suggests that the minimum space standards set out in LP Policy HS5 should be used as a guide to establish the size of the dwelling. However, as highlighted in another recent appeal¹ in the area, neither the policy, nor the SPD, explain why these standards should form an upper limit for rural workers dwellings.
38. The proposals are for identical 3 bedroom dwellings with a detached single garage. The total floorspace of each dwelling (excluding the garage) would be 141 sqm. The minimum space standards require a 3 bedroom dwelling to have a gross internal floor area of 102 sqm. However, the dwelling includes an office, downstairs toilet and utility room which the appellant indicates would be used/shared with the business. Whilst the utility room has a separate access to the farm office and toilet, it still has direct access from the external area and could be used for business purposes. If the floor space of these rooms is excluded, then the internal domestic floor area would be 125.2 sqm.
39. Whilst the dwellings would be larger than the minimum space standards, they would be relatively modest 3 bedroom family houses, and would not be excessively large in relation to the established needs of the enterprise. Although provision of a garage is not essential, the storage space it provides could help to reduce other domestic paraphernalia within the garden area. There is no evidence to suggest a dwelling of this size would be unaffordable for a rural worker.
40. At the hearing it was indicated that the cost of the dwelling would be funded through either existing cash reserves and/or a corporate mortgage. Whilst there is no written evidence to support this, given the average pre-tax profits

¹ Appeal Reference APP/E2734/W/22/3298965

for the firm over the last 4 years, in what has been a very challenging period, I consider that this would be possible.

41. Therefore, whilst the proposed dwelling would be larger than the minimum space standards, I consider it would be of a size commensurate with the established functional need of the business.

Conclusion on essential need

42. All in all, I consider that it has been adequately demonstrated that there is an essential need for a dwelling for a rural worker to live permanently on each of these farms. Therefore, there is no conflict with Policy HS9 of the LP nor with paragraph 80 of the Framework.

Planning Balance and Conclusion

43. Paragraph 147 of the Framework sets out the general presumption against inappropriate development in the Green Belt. It states that such development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
44. The proposals would be inappropriate development in the Green Belt which is harmful by definition. In addition, the proposal would result in a reduction in openness and encroachment into the countryside. According to the Framework (paragraph 148) substantial weight has to be given to any harm to the Green Belt. The fact that the proposals would be appropriate with respect to the flood zones is a neutral matter.
45. In its favour I have identified that there is an essential need for a dwelling on each farm to support an existing rural business and to ensure adequate welfare is provided for the large number of birds kept at each farm, and this attracts substantial weight. In addition, future occupiers would help to support local services and facilities and I give this moderate weight. In this respect I have had regard to the positive support given in the Framework for supporting a prosperous rural economy.
46. In my judgement, the need for the proposed dwellings in connection with the existing agricultural enterprise, together with the economic benefits the proposals would bring, clearly outweigh the harm the schemes would cause. Consequently, very special circumstances do exist, and the scheme would not conflict with the Framework or Policy GS4 of the LP.
47. I therefore conclude the appeals should be allowed.

Conditions

48. The Council's suggested conditions were discussed at the hearing and various amendments, additions, and alterations were agreed. I have considered these in the light of paragraph 56 of the Framework. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the wording of the pre-commencement conditions was agreed by the appellant.
49. In addition to the standard implementation condition, to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Conditions 3 and 13 are necessary in the interests of the character and

appearance of the area and to accord with LP Policies HP3 and NE4. For conciseness I have combined suggested condition 14 with condition 13.

50. Given the sensitive nature of the end use, conditions 4 to 7 are necessary to safeguard the development from any potential contaminated land. These need to be pre-commencement conditions as they relate to work necessary before and during the construction phase. However, as suggested condition 8 duplicates requirements in the other conditions and creates ambiguity I have not imposed it.
51. For highway safety and the visual amenity of the site, condition 8 is necessary. To ensure the dwelling remains a size commensurate with the enterprise, retains adequate parking in accordance with LP Policy TI3 and to protect the character and appearance of the area, conditions 9 and 10 are necessary. Condition 12 is imposed to ensure that the proposal complies with national and local policies for developments in open countryside.
52. Condition 11 is necessary to reduce flood risk and to comply with Policy CC1 of the LP. To ensure the site is satisfactorily drained condition 14 is imposed. This needs to be a pre-commencement condition as it relates to works which need to be in place before and during the construction phase.
53. I have not imposed suggested condition 11 as it is covered by the Building Regulations, and it was agreed at the hearing that suggested condition 12 was not necessary.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ian Pick	Ian Pick Associates
Sam Harrison	Ian Pick Associates
Chris Roach	Oakland Farms Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Emma Walsh	Senior Development Manager Officer, North Yorkshire Council
Emma Howson	Senior Development Manager Officer, North Yorkshire Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Additional suggested condition (agricultural workers occupancy) submitted by the Council.
2. Rebuttal to the application for costs made verbally by the appellant submitted by the Council.

Annex A

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: Location Plan – Dwg Nos IP/OF/KF/01 and IP/OF/BF/01; Site Plan - Dwg Nos IP/OF/KF/02 and IP/OF/BF/02; Elevations and Plan - Dwg Nos IP/OF/KF/03 and IP/OF/BF/03; Garage Elevations - Dwg Nos IP/OF/KF/04 and IP/OF/BF/04; and Existing Site Plan - Dwg Nos IP/OF/KF/05 and IP/OF/BF/05.
- 3) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been made available on site for inspection and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall take place until a land contamination Phase II Intrusive Site Investigation Report has been submitted to, and approved in writing by, the local planning authority.
- 5) Where site remediation is recommended in the approved Phase II Intrusive Site Investigation Report, no development shall take place until a land contamination remediation strategy has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall include a timetable for the implementation and completion of the approved remediation measures.
- 6) Land contamination remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy, or contamination not previously considered in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report is identified or encountered on site, all development in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to, and approved in writing by, the local planning authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
- 7) Following completion of any measures identified in the approved Remediation Strategy, or any approved revised Remediation Strategy, a land contamination Verification Report shall be submitted to the local planning authority. The dwelling hereby permitted shall not be occupied until such time as the remediation measures have been completed for the site in accordance with the approved Remediation Strategy, or the approved revised Remediation Strategy, and a Verification Report in respect of those remediation measures has been approved in writing by the local planning authority.
- 8) The dwelling hereby permitted shall not be occupied until the access, parking, manoeuvring and turning areas have been constructed in accordance with Dwg Nos IP/OF/KF/02 and IP/OF/BF/02 and these areas

shall thereafter be maintained clear of any obstruction and kept available at all times for those purposes.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the garage shall not be converted into domestic accommodation.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, garages, outbuildings, dormer or roof windows shall be erected or inserted other than those expressly authorised by this permission.
- 11) The development shall be undertaken in accordance with Section 5 – Flood Mitigation Measures of the submitted Flood Risk Assessment (Alan Wood & Partners, January 2023).
- 12) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 13) No development above ground level shall take place until a detailed scheme for landscaping, including the planting of trees and or shrubs and the use of surface materials and boundary fences or walls has been submitted to, and approved in writing by, the local planning authority. The scheme shall specify materials, species, tree and plant sizes, number and planting densities and the timing of the implementation of the scheme, including any earthworks required. The landscape scheme is to be implemented in accordance with the approved scheme. Any trees or shrubs which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 14) No development shall take place until a scheme for the disposal of surface water and foul sewerage has been submitted to, and approved in writing by, the local planning authority. The following criteria should be considered for the disposal of surface water:
 - The suitability of soakaways, as a means of surface water disposal, should first be ascertained in accordance with BRE Digest 365 or other approved methodology.
 - If soakaways are not feasible, then a proposal to discharge surface water to a watercourse (directly or indirectly) may be considered.
 - Discharge from “greenfield” sites should be taken as 1.4 litres per second per hectare (1:1 year storm).
 - Storage volume should accommodate a 1:30 year event with no surface flooding and no overland discharge off the site in a 1:100 year event. A 30% allowance for climate change should be used in all calculations. A range of durations should be used to establish the worst case scenario.The dwelling hereby permitted shall not be occupied until the drainage scheme has been completed in accordance with the approved scheme.