Appeal Decision

Hearing held on 5 March 2024

Site visit made on 5 March 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2024

Appeal Ref: APP/Z1510/W/23/3326410
Land North of Catley Cross, Long Gardens, Twinstead, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Gilbert against the decision of Braintree District Council.
- The application Ref is 22/03395/FUL.
- The development proposed is the siting of 1No. one-storey, 3-bedroom temporary dwelling, along with stable block, hay/machinery building, manège and hardstanding driveway.

Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the hearing, an application for costs was made by Mr & Mrs Gilbert against Braintree District Council. This application is the subject of a separate decision.

Procedural Matters

3. The address in the banner heading above is taken from the Council's decision notice, following agreement by the parties at the Hearing that it accurately identified the site in accordance with the unique property reference number allocated by the Council's computer system.

4. During the appeal process the Council advised that the description of proposed development did not include a change of use of land from agriculture to commercial equestrian use[1]. At the Hearing, the appellants representatives advised that the land had been previously owned by Linkswood Stud and used by Twinstead Riding School for lessons. It was therefore suggested that it has previously been in use for equestrian purposes such that a change of use was not required.

5. However, the Council advised that plans from a planning application for Linkswood Stud in 2014 did not include the appeal site, indicating it was not owned by them at that time. On the limited evidence before me it is not possible to reach a conclusion on the existing lawful use of the land. As interested parties may be prejudiced by modifying the description of

[1] As set out in the Council's statement of case (9 January 2024) and the accompanying Bourne Rural Report (January 2024).

development to include the change of use of land, I have not amended it in this regard. I have considered the appeal on the basis of the description of development applied for. Any issue relating to the existing lawful use of the land, is a matter between the Council and the appellant.

6. In the Statement of Common Ground (SoCG), the parties further acknowledged that the description of development as set out on the planning application form and Council's decision notice, did not include the proposed hay/machinery storage building. This building is clearly shown on the submitted drawings, notably drawing number PO2 which was publicised by the Council during the application determination. On this basis, I am satisfied that no interested parties would be prejudiced in my amendment of the description in the banner heading above, to accurately reflect the development proposed.

7. At the time of my visit, I observed that there were a number of field shelters and a static caravan in situ on the appeal site. As the structures and mobile home differ in appearance, scale and siting to the buildings and temporary dwelling proposed, I have considered the appeal on the basis of the submitted plans. Any issue regarding the current structures and use is a matter for the Council.

8. In December 2023 the Government published a revised National Planning Policy Framework (the Framework). The parties were given the opportunity to comment on the changes in the SoCG and I have had regard to the responses in my decision.

Main Issue

9. In its statement of case, the Council raised a concern about the nature of the existing access and its suitability to serve the proposed development. However, it was clarified at the Hearing that the Council did not consider this to be a significant issue. On the information before me I am inclined to agree. In light of all that I have read and the discussions I heard at the Hearing, I therefore consider that the main issue in relation to this appeal is;

    - Whether there is an essential need for a temporary dwelling in the countryside to accommodate a rural worker, having regard to the functional need and viability of the enterprise.

Reasons

Development Plan Policy

10. Policy LPP 1 of the Braintree District Local Plan, Section 2, 2022 (LP) confines development outside development boundaries to uses appropriate to the countryside. The approach for considering residential accommodation in the countryside where it is for workers supporting rural enterprises and where permission for such accommodation would not otherwise be granted, is set out in LP Policy LPP 38. This includes the need to demonstrate that there is a clearly established functional need for a full-time worker to live on the site. There is no dispute between the parties that the site is located in the countryside outside any of the Council's identified settlement boundaries.

11. Policy LPP 38 sets out that permission may be granted in respect of temporary rural workers dwellings for a period of up to 3 years. This is based on a clear demonstration of the intention to develop the enterprise concerned and that

there is clear evidence that it has been planned on a sound financial basis. This chimes with the advice contained in the Planning Practice Guidance (PPG) which advises that it is appropriate to consider granting permission for a temporary dwelling for a trial period in relation to new enterprises and that there should be confidence that the enterprise will remain viable in the future[2].

12. The appellants contend that there is no requirement for the proposed enterprise to be profitable within a 3-year period and that given the temporary nature of the proposed dwelling, the proposal could be revisited at the end of year 3. Be that as it may, and whilst the PPG does not suggest an appropriate time period, the wording of Policy LLP 38 is irrefutably unambiguous that the enterprise must have been planned and established, with evidence that there will be a sound financial foundation created within a 3-year period. This already makes allowance for the fact that an emerging enterprise will take time to establish, and I am satisfied that the application of a 3-year period is appropriate.

Functional Need

13. The appellants' proposed business is two-fold, including the buying, training and selling on of ponies initially, with the subsequent breeding of Connemara ponies in the future. I understand that whilst the buying and selling on of ponies is occurring, the stud aspect of the enterprise has not yet begun. The appellants state that the proposed temporary rural workers dwelling is necessary for the management and operation of their proposed Connemara pony breeding and training business.

14. In its assessment against the criteria of LP Policy LPP 38 the Council, whilst accepting that a full-time worker may be necessary in future to oversee the operation of the breeding enterprise (by year 3), asserts that the need for a worker to live on the site is not justified[3].

15. The keeping of ponies including activities such as feeding, watering and exercising can generally be carried out without the need for a residential occupant to be within sight and sound of the animals. Therefore, the existence of the horses alone is not sufficient justification for someone to live on the site.

16. The evidence before me and that I heard during the Hearing, indicates that supervisory requirements would be increased once the Connemara pony stud activity commences. This would particularly be the case during foaling, which often occurs at night and may necessitate human intervention to ensure the welfare of both the mare and foal. This is corroborated by the letter of support from Linkswood Stud[4].

17. At the Hearing the appellants' representatives advised that 3 foals would be produced in year 1 and 4 foals in years 2 and 3 respectively, with foaling taking place in February/March and May/July. I do not doubt the importance of closely monitoring a mare and its foal shortly before, during and soon after giving birth for animal welfare reasons. However, this would amount to a small number of days or weeks per year in worse-case situations per pony, where for example, a foal experiences difficulty during birth, or fails to suckle from its mother initially. Insemination by artificial means would also enable the appellants to

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[2] Paragraph: 010 Reference ID: 67-010-20190722.
[3] Paragraph 4.37 of the Bourne Rural Appeal Statement.
[4] Appendix 1 of the appellant's Planning Statement.

know when foaling is likely to occur, such that preparations could be made for increased surveillance.

18. Paragraph 8.10 of the appellants' Appeal Statement advises that there will be a significant amount of breeding activity at year 4 in excess of 6 months a year, acknowledging that prior to this, breeding would be limited to a particular period of the year. Activities for the remaining time would relate to training and the production of other ponies that as discussed above, could be managed from a residence off-site. Given the seasonality of foaling and the very low numbers of foals to be produced during the first 3 years, it is evident that the activities and scale of the enterprise proposed, would be insufficient to justify a 24-hour presence, all year round.

19. It is the appellants' case that there is an essential need for a dwelling on the appeal site itself and that no other dwelling within the vicinity could meet this need. Nevertheless, it is not clear from the evidence or the discussions at the Hearing where the appellants currently live, and whether this would be a sufficiently close location, so as to enable the increased provision of care for the broodmares when required. Neither am I satisfied that this current accommodation, in combination with CCTV or other equine technology such as foaling alerts, have been fully explored by the appellant.

20. The Council advised in its officer report and orally at the Hearing that it has no objection in relation to the equestrian aspects of the proposal to prevent this from being developed, subject to obtaining planning permission. Outlay in purchasing the land, installation of stock proof fencing and field shelters has occurred. However, no obvious investment has been made in respect of the proposed stud activity which it is suggested would be the main endeavour of the enterprise, and the driving force behind the need for accommodation on site. The appellants consider that this aspect of the business cannot be commenced without the presence of a temporary dwelling. I see no obvious reason that the production of foals could not begin, with the relatively long gestation period of broodmares, or that arrangements made for greater on-site supervision during the first foaling period could not be made, given its relatively short time frame and the suggested limited number of broodmares involved.

21. Moreover, there is no detailed information before me regarding the expertise of the appellants with regard to horse breeding, nor a clearly defined business plan, such that I can be confident that there is a clear intention to develop and sustain the enterprise as proposed.

Viability

22. In support of the proposal, the appellants have provided budget/profit forecasts for the planned equestrian enterprise over a 4-year period. It is intended for the proposed temporary dwelling to be privately funded, and the appellant suggests that it does not need to appear on the balance sheet for the business. No evidence has been presented to demonstrate that the appellants have the means to fund the purchase of the temporary dwelling or importantly, the construction of the equestrian facilities without the need for loans or other financial assistance, which could have implications for the viability of the enterprise. At the Hearing the appellants representatives did not know whether the dwelling would be privately owned or form an asset of the business, such I am not confident that the two would be intrinsically linked.

23. I acknowledge that there is no development plan or national planning policy requirement that would prevent the use of private funds for new development. However, under normal circumstances these would be direct costs of the business and it is the enterprise itself that must be viable and capable of supporting the proposed dwelling, regardless of ownership, even on a temporary basis. It is clear from the supplied budget forecasts that the enterprise could not fund what is likely to be a significant expenditure for the temporary dwelling.

24. Whilst I recognise that the figures provided are projections and not accounts, there is no substantive evidence as to how other costs to the enterprise have been arrived at, for example the veterinary and consumable costs. In contrast, the Council has used standard industry data to suggest that the figures provided are lower than would be expected[5]. For instance, it suggests that consumable costs including hay and feed would be circa £1883-2200 per horse per year, compared to the appellants' suggested figure of £3000 in total at year 3. In this regard, I find the Council's evidence that the appellants figures are low, persuasive.

25. In contrast to the low figures for costs, the appellants' projected revenue from the produced foals appears at £10k in year 4 to be expectant, setting aside the fact that it is also beyond the 3-year period. The supplied Trading Review information from the Clifden sales in May 2023 indicates that of 634 ponies, only 10 sold for a 5-figure sum (1.6%) and 36% of ponies did not sell at all[6]. With no evidence of the credentials of the appellants in respect of horse breeding, any information to indicate whether the ponies would have a particular bloodline and without knowing the performance potential of the ponies, I find no compelling evidence that a premium could be commanded for the produced ponies on an ongoing and regular basis.

26. During the Hearing the appellants representatives confirmed that the financial projections make no allowance for lower quality foals being born or a loss of foals and/or mares during birth. Although it was suggested if a foal died, another would be bought in to replace it, this has not been accounted for in the costs. Neither has any allowance been made for ponies remaining unsold. I find no evidence that the appellants' presence on site would prevent loss in all instances. Moreover, it was conceded at the Hearing that costs for insemination in years 1 and 2 had not been accounted for in the financial projections, such that any profits would be lower than suggested. Consequently, even if I accepted that there would be a demand for UK produced Connemara ponies, it has not been robustly demonstrated that the level of sales income is reasonably achievable.

27. The parties dispute the minimum wage for a rural worker with the appellant suggesting a figure of £19,723, and the Council suggesting a figure of between £22,640–23,174. The difference in the figures appears to relate to the number of suggested hours that would be worked. Even if I was to accept the appellants' lower figure, it is clear from the financial projections that the enterprise could not support the income of a full-time worker by year 3, as required by Policy LPP 38[7].

[5] As set out in the Bourne Rural Appeal Statement.
[6] Appendix 1 of the appellants' Appeal Statement.
[7] As set out within Appendix 2 of the appellants Planning Statement – 'General assumptions on year 3.'

28. I acknowledge that Policy LPP 38 enables rural enterprises to develop over time. This is so that confidence can be gained as to whether a viable business can be built. However, the financial projections are not sufficiently accurate or convincing to persuade me that the business has been planned on a sound financial basis. This limits the degree to which I can have confidence that the enterprise would become viable, sufficient to support a full-time rural worker in the future.

Conclusion

29. It has not been demonstrated that there is an essential need for a temporary dwelling in the countryside to accommodate a rural worker, having regard to the functional need and viability of the enterprise. Therefore, the development would conflict with Policies LPP 1 and LPP 38 of the LP as set out above.

Other Matters

30. The lack of objections from statutory consultees is neutral in the planning balance weighing neither for, nor against, the proposal. The support from an interested party does not equate to a lack of harm. I have come to a different view regarding the essential need and financial viability of the proposed enterprise and consider that there is insufficient justification for permitting a new dwelling, even on a temporary basis, in the countryside where new residential development is restricted.

31. The Council raised concerns during the appeal process regarding the suitability of the proposed storage building for its intended purpose of keeping hay without adequate ventilation. However, this did not form part of the reason for refusal. As the main issue provides a clear reason for dismissing the appeal, I am not required to consider this matter further.

Conclusion

32. The proposed development would conflict with the development plan and there are no other considerations that would outweigh this conflict. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Brown	Reeve Brown
Sam Lees	Reeve Brown

FOR THE LOCAL PLANNING AUTHORITY:

Sam Trafford	Planning Officer, Braintree District Council
Jack Street	Planning Officer, Braintree District Council
Jill Scrivener	Bourne Rural Planning Consultancy Limited