



Appeal Decision

Hearing held on 24 July 2024

Site visit made on 24 July 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2024

Appeal Ref: APP/V2635/W/24/3342502

Further Fen Farm, Further Fen Lane, Southery, Norfolk PE38 0HS

- 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 Peter William Legge of A.L. Legge and Son Ltd against the decision of the Borough Council of King's Lynn and West Norfolk.
 - The application Ref is 23/01167/F.
 - The development proposed is a dwelling for Farm Manager Accommodation including a new weighbridge office and driver facilities.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council and appellant agreed that part of the gabled roof of the proposed building was not shown on the rear elevation drawing. The Council confirmed that this error did not materially affect its case in respect of the second reason for refusal. It has subsequently been rectified through submission of an amended drawing received after closing the hearing.
3. There had been no third party objections to the appeal proposal and the error with the drawing related to a relatively small part of the proposed building's roof. In having regard to caselaw, I am satisfied that no procedural unfairness or injustice would be caused to any third party by me not seeking their comments on the amended drawing. As such, I have proceeded to determine the appeal on this basis.
4. Compared to the previous iteration of the National Planning Policy Framework ("the Framework"), under which the planning application was determined, there are no changes in the revised December 2023 version of the Framework relevant to the substance of this appeal. Both main parties have had the opportunity to consider the revised document and would therefore not be prejudiced by the changes to the national policy context. All references to the Framework in this appeal relate to the revised document.

Background and Main Issues

5. The main parties agreed at the hearing that the appeal site is within the open countryside beyond the settlement boundary of Southery as set out in the King's Lynn & West Norfolk Borough Council Site Allocations and Development Management Policies Plan, Adopted September 2016 ("the SADMPP"). It is therefore subject to policies that seek to avoid new homes in the countryside

so as to promote sustainable patterns of development and protect the intrinsic character and beauty of the countryside, unless essential for agricultural or forestry needs.

6. Paragraph 84 of the Framework states that planning policies and decisions should avoid the development of isolated homes in the countryside, unless amongst others, there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
7. At the hearing I adjourned to seek the parties' views on whether or not the Court Judgment in *Braintree*¹ had a bearing on the parties' cases in respect of Framework Paragraph 84. In *Braintree* the Court determined that the word "isolated" in the Framework's phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement.
8. In response to questioning, both parties contended, for the reasons set out in the Council's written evidence, that the appeal proposal would not constitute an isolated dwelling in the countryside for the purposes of Framework Paragraph 84. The Council explained that the proposal would, however, conflict with Framework Paragraph 83, in that the appeal site's location would not enhance or maintain the vitality of rural communities.
9. I saw that the appeal site is located near to the existing farm dwelling and the cluster of other buildings on the farm base, including a pair of semi-detached dwellings. However, those buildings and the appeal site are set a considerable distance away from the nearest settlement of Southery, which lies on the opposite side of the A10 classified road to the east, with fields in between. The cluster of buildings on the farm base do not, in my judgement, constitute a settlement for the purposes of Framework Paragraph 84.
10. In taking account of the location of the appeal site and its surroundings, together with the Judgment in *Braintree* and the parties' submissions, I find that the appeal site is physically separate and remote from the closest settlement, which is Southery. Consequently, the appeal proposal would constitute an isolated dwelling in the countryside for the purposes of Framework paragraph 84.
11. The Council has appraised the farm balance sheets for the period 2019-2022, which shows that the farm could sustain a dwelling of the size proposed. As such, there is no dispute between the parties that the farming enterprise meets the financial tests in SADMPP Policy 3.c and 3.d. I have no basis to reach a contrary view in this appeal.
12. Accordingly, taking account of the above, I consider the main issues in this appeal are:
 - Whether, having regard to the relevant policies of the development plan and the Framework, which seek to avoid isolated homes in the countryside, there is an essential need for a rural worker to live at or near their place of work in the countryside, and

¹ *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

- the effect of the proposed development on the character and appearance of the area.

Reasons

Policy Context

13. Policy CS02 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, Adopted Version July 2011 ("the CS") sets the settlement hierarchy for the Borough, identifying Southery as a Rural Village. CS Policy CS06 sets the strategy for rural areas of promoting sustainable patterns of development and protecting the intrinsic character and beauty of the countryside. It seeks to ensure, amongst other objectives, that development of greenfield sites beyond villages and in the countryside will be resisted unless essential for agricultural or forestry needs. CS Policy CS08 requires all new development to be of high quality design.
14. SADMPP Policy DM2 states that areas beyond settlement development boundaries will be treated as countryside where development will be more restricted and limited to that identified as suitable in the rural area by other policies of the local plan, including rural worker housing under SADMPP Policy DM6.
15. SADMPP Policy DM6 states that new permanent dwellings should only be allowed to support existing rural based activities on well-established rural based enterprises where, amongst other criteria, there is a clearly established existing functional need requiring occupants to be adjacent to their premises during the day and at night, and that the need could not be met by existing dwellings within the locality.
16. SADMPP Policy DM15 states that development must protect and enhance the amenity of the wider environment. Proposals will be assessed against factors including visual impact, and that the scale, height, massing, materials and layout of development should respond sensitively and sympathetically to the local setting.

Essential Need

17. The appellant's arable farming enterprise is across some 4500 acres of farmland, with the majority of this located around Southery, together with other farmland along the A10 corridor between King's Lynn and Downham Market. The agricultural buildings at the farm base are predominantly modern type buildings. They provide storage for significant quantities of crops in controlled conditions, along with ancillary facilities and equipment, such as for the grading and bagging of crops, particularly potatoes, but also beet and grain.
18. The enterprise is managed by the appellant as the farm manager, who lives in Downham Market, along with his father who resides in the dwelling close to the appeal site on the farm base, which the evidence suggests is subject to an agricultural occupancy condition. Around 30 or so members of staff are employed in the enterprise, which also includes contract farming, and a road haulage operation comprising of some 8 lorries operated from the farm base. The haulage element transports crops grown on the farm and on other farms in the area.

19. A typical busy day on the farm in late July involves a 5am start for the farm manager and finishes around 22:30pm in the evening. Activities include managing the cutting of wheat straw, grading and bagging potatoes, managing crop storage systems (including temperature and drying equipment), dealing with the return of lorries in the late afternoon, and the loading/unloading of lorries, often before or after employees start work.
20. The farm manager works some 75-90 hours in busy weeks, with 12-14 working hours per day being common. Due to the demands of the enterprise, he stays overnight in his father's farm dwelling around 30-40 times per year. However, whilst a dairy farm worker may work fewer hours than the farm manager based on the John Nix Farm Management Pocketbook, the number of hours worked is not sufficient on its own to demonstrate a clear functional need for a farm worker to live on the farm. Regard must be had to whether the presence of a worker is essential to the functioning of the enterprise.
21. A detailed written log setting out the type, frequency and severity of incidents occurring on the farm over a prolonged period that required the attention of the farm manager, whether during the day or at night, is not before me. However, it was put to me by the appellant during the hearing that problems are continually occurring on the farm due to the nature of the activities. Whilst the appellant considered that it was difficult to explain the full extent of those problems, they contend that it is essential for the farm manager to live on the farm. This is to provide supervision, direction, and assistance to employees, and to solve a multitude of problems that arise on a daily basis from the activities carried out on the farm, along with related administrative office work.
22. The storage of crops in optimum conditions to maintain their quality and financial value, and thus the viability of the farming enterprise, is of significant concern to the appellant. Again, a detailed written log of the type, frequency and severity of incidents affecting stored crops was not before me in evidence. However, it was explained by the appellant that such faults include failed cooling equipment and the ventilation louvres in the walls of the storage buildings becoming stuck in an open or closed position, resulting in crops being stored at temperatures either too low or too high to maintain their optimum condition and value.
23. The appellant explained that such faults occur intermittently and sporadically, with regular checks of the storage buildings' drying and temperature control systems being necessary. For example, if very cold air enters the storage building through ventilation louvres being stuck in an open state, the potato crop can deteriorate reducing values from some £400 per tonne to £10 per tonne, resulting in serious financial consequences to the farm. An incident of this nature occurred some 7-8 years ago when ventilation louvres in a storage building became stuck in an open state for a period of only a few hours. This resulted in the deterioration of crop quality and a significant loss of income to the farm.
24. Clearly, if equipment fails, particularly during adverse weather conditions, damage to crops could occur relatively quickly causing a loss of value and thus income to the farm. I have no basis to doubt that there is no proven fail-safe mechanism to eradicate this risk completely or that SMS messages sent by the storage equipment to the farm manager's mobile phone to alert him to faults or system failure can be temperamental. However, even if faults with the crop

storage systems are unpredictably intermittent and sporadic in nature, and the risk of occurrence could not be eradicated, the evidence before me indicates that prolonged incidents of such severity that result in the significant deterioration of crops and their value to the farm are relatively rare.

25. The rarity of such occurrences could be partly explained by the appellant's experience in fixing certain recurring faults with the equipment on the farm. For example, the appellant explained that the sensors controlling the operation of ventilation louvres in the storage buildings' walls commonly fail. The sensors are simple to replace, and I heard that several were replaced every year. To my mind this was an example of how effective maintenance by the farm manager, together with the potential for some of the SMS alert messages to be accurate, combine to reduce the risk of system faults occurring of such severity that they significantly reduce the quality and value of stored crops.
26. I acknowledge that tractors and machinery can break down or become stuck in the fields at night, particularly during extreme rainfall events. However, I heard nothing at the hearing to persuade me that such incidents were urgent and could not normally wait to the following day to be dealt with. Furthermore, there is limited evidence on why other employees could not, given the recognised risks associated with the farming industry, be trained as first aiders.
27. The evidence suggests that legislation associated with haulage operations requires 'on call' availability of management to assist lorry drivers. However, I have limited substantive evidence that 'on call' in this context means from the appeal site. I note that the appellant's father who lives on the farm was described as mainly in control of the haulage operations. There is limited evidence in the form of a log detailing the frequency and incidences associated with the haulage use that occur out of hours, or why shift patterns for farm workers could not be adjusted to cover early morning and late evening loading and unloading of lorries.
28. Despite several CCTV cameras and the presence of the appellant's father living and working at the farm base, and 2 other residential dwellings occupied by non-farm workers close-by, I heard that high value chemicals worth tens of thousands of pounds were stolen some 3-4 years ago. The security of valuable chemicals and fuels stored on the farm base is of significant concern to the appellant, heightened by accessibility along the public right of way through the farm, which the Council objected to being gated.
29. The location and orientation of the proposed building would provide clear sight of approaching vehicles along Further Fen Lane for some distance, enhancing surveillance. However, on the evidence before me, I am not persuaded that the incidences of theft described to me, whilst of a high financial loss to the business and distressing to the appellant, have been so persistent as to justify the presence of an additional dwelling on the farm, or that this would be the only viable or practical option for enhancing security. The presence of the existing dwellings did not deter the perpetrators in the earlier theft.
30. The appellant's explanation that the problems and incidents that occur on the farm need dealing with on the farm is an undeniable truism. However, for the reasons given above, I find that the nature, frequency and severity of incidents occurring on the farm do not provide a sufficiently strong indication that a permanent presence at the site by the farm manager is essential to the

functioning and ongoing viability of the enterprise, even accounting for the hours worked.

31. The permanent presence of the farm manager on site would allow a faster reaction time to respond to incidents on the farm. However, given that the appeal site is a short 10-minute drive from his current home, I am not persuaded that there would be a significant delay in responding to any incidences on the farm, including those infrequent incidents with the potential to result in a significant harm to the quality of crops. Furthermore, the number of overnight stays by the farm manager on the farm are not to my mind excessive and would take place only a relatively short distance away from his home.
32. Even if the existing farm dwelling, which is 5 bedroomed in size, was discounted, I see no reason why the pair of existing semi-detached dwellings at the farm base could not be adapted for occupation by the farm manager. At the hearing the appellant accepted it would be possible in practical terms to convert them to provide a large family sized dwelling. This would necessitate the eviction of long-standing tenants, which the main parties considered would be undesirable. However, the appellant acknowledged that it is a course of action open to them and I find no reason to disagree.
33. At the time of refusing planning permission the Council's written evidence is that there were around 5 x 4 bedroomed dwellings marketed for sale between £340-485k within 3 miles of the appeal site. It also provided an update during the hearing that 5 family sized dwellings were marketed for sale in Southery, around half a mile from the appeal site, for between £235-545k. This was not disputed by the appellant.
34. The appellant acknowledged during the hearing that it would be more convenient for the farm manager to live on the farm by avoiding the need to travel and being on hand to assist his father. However, even if the sizeable farm dwelling occupied by the appellant's father was discounted, I am not persuaded that accommodation in the vicinity of the farm, or indeed the farm manager's current dwelling, would be too far away to provide prompt and timely responses to deal effectively with the frequency and severity of the incidents expected to occur on the farm. On the evidence before me and from what I heard at the hearing, having the farm manager living on the farm would not be essential for the functioning of the enterprise in its current form.
35. There is no dispute that the non-residential elements of the proposed building would make a positive contribution to enhancing the welfare facilities for lorry drivers and the quality control of crops. However, the appellant acknowledged that the residential and non-residential facilities in the proposed building could be provided within separate buildings.
36. Consequently, I conclude on this issue that an essential need for a rural worker to live at or near their place of work in the countryside has not been demonstrated and therefore the appeal proposal conflicts with CS Policy CS06 and SADMPP Policy DM6, criteria 3a and 3b, the requirements of which are set out above.
37. Furthermore, I find conflict with Framework Paragraph 84, insofar as an isolated dwelling in the countryside should be avoided unless there is, amongst other exceptions, an essential need for a rural worker, including those taking

majority control of a farm business, to live permanently at or near their place of work in the countryside.

Character and appearance

38. The landscape around the appeal site is strongly representative of the characteristics described in the King's Lynn and West Norfolk Borough Council Landscape Character Assessment 2007 ("the LCA"), which identifies the appeal site as located within the "Settled farmland with plantations" landscape type. This is described as tranquil and dominated by arable farming, consisting of a network of geometric fields, interspersed with woodland plantations that define much of the skyline and where scattered farm dwellings and small settlements are dispersed. These characteristics give the countryside its intrinsic character and beauty in the area of the appeal site.
39. The largely open, undeveloped state of the appeal site, whilst fenced off as part of the farm complex, is nonetheless visually contiguous with the surrounding arable fields. Absent of buildings, its current state makes a modest positive contribution to the character and appearance of the rural landscape, notwithstanding its proximity to the large storage buildings nearby and areas of hardstanding for lorry parking.
40. The Council's objection relates only to the proposed building, which would be highly visible on the approach to the cluster of farm buildings from Further Fen Lane and the public footpath. In this position, its overtly domestic character, resulting largely from its pattern of window openings and large front glazed gable, together with associated domestic paraphernalia, would erode the acknowledged qualities of the rural landscape, and its intrinsic character and beauty.
41. The proposed building would also be visible in long distance and somewhat fleeting views from the A10, above the roadside planting that lines the road. In these views its built form and domestic appearance would have a discernible urbanising effect, contrasting with the simpler appearances of the agricultural buildings and their mostly green colour finishes in the rural landscape. Whilst planting could be secured to soften the appearance of the proposed building, and some had already established, new planting would take several years to fully establish and provide significant screening.
42. From the viewpoints identified above, the proposed building would be more overtly domestic in appearance than the existing farm dwelling. Nonetheless, given the visually isolated location of the two dwellings there is no strongly established residential character and therefore a lack of uniformity between their architectural styles would not be visually harmful. However, this would not outweigh the harm I have identified above.
43. Consequently, the appeal proposal would harmfully erode the intrinsic character and beauty of the countryside in this location. In the context of the nearby buildings, the scale of this harm would be modest and relatively localised in extent. However, given my conclusion on the first main issue, the harm would not be outweighed by need.
44. For these reasons, I conclude that the appeal proposal would harm the character and appearance of the area, contrary to CS Policies CS06 and CS08, and SADMPP Policy DM16, insofar as they seek development to protect the

intrinsic character and beauty of the countryside and respond sensitively and sympathetically to the local setting.

45. There would also be conflict with the Framework Paragraphs 135 and 180, which seek to ensure that development recognises the intrinsic character and beauty of the countryside, and is sympathetic to local character, including landscape setting.

Other Matters

46. The appeal site lies within the zones of influence of the Breckland Special Area of Conservation (SAC) and Special Protection Area (SPA), The Wash SPA and Ramsar site, The Wash and North Norfolk Coast SAC, and the Norfolk Valley Fens SAC, which are protected as European sites of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended).
47. The strategy to mitigate the potential adverse in-combination effects of new housing development on the nature conservation interests of the European sites referred to above is set out in the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy March 2021 ("the GIRAMS").
48. Following the hearing, the parties confirmed that payment of the appropriate tariff-based contribution to fund delivery of the GIRAMS, had been secured in accordance with Section 111 of the Local Government Act 1972. Accordingly, the parties agree that the appeal proposal would mitigate its potential adverse effects on the European nature conservation sites, and Natural England has subsequently confirmed it has no objection to the development. Nonetheless, as I have found the appeal proposal to be unacceptable for other reasons, it is not considered necessary to look at this matter in detail.
49. An additional resident household would be expected to deliver negligible benefits to the rural economy, including through supporting the services and facilities in nearby settlements. As such, these benefits are of limited weight in its favour, insufficient to outweigh the harms identified above. I see no reason to disagree with the areas of common ground between the main parties. However, an absence of harm in these respects does not carry positive weight in favour of the appeal proposal, and these would be requirements of any well-designed scheme.

Conclusion

50. Based on the evidence before me and all that I heard during the hearing, there is no demonstrable essential functional need for the proposed dwelling to accommodate a rural worker at the farm. Even if an essential functional need had been demonstrated, the evidence suggests that this could be met by existing accommodation on the farm or within the locality.
51. It follows therefore that the appeal proposal would be contrary to the Council's settlement hierarchy and would undermine its plan-led approach to development in the Borough. Furthermore, it would cause a moderate level of harm to the character and appearance of the area, which would not be outweighed by any need for the development. Together, these harms bring the development into conflict with CS Policies CS06 and CS08, and SADMPP Policies DM6 and DM15, and thus the development plan as a whole.

52. There are no material considerations of sufficient weight, including the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

G Sylvester

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Legge
Mr William Legge
Mrs Hannah Daley

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Clare Harpham - Planning Officer MA in Urban and Regional Planning
Mrs Claire Dorgan - Senior Planning Officer BA (Hons) DipTP MRTTP
Mr Lvov - Planning Technical Support Team