Planning Inspectorate

Appeal Decision

Hearing held on 6 February 2025

Site visit made on 6 February 2025

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th of March 2025

Appeal Ref: APP/V2635/W/24/3351657
Cattery at White Dyke Farm, Black Dyke Road, Hockwold cum Wilton, Norfolk IP26 4JW

- 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 John Scott against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref is 24/00227.
- The development proposed is change of use of the building from a cattery to a cattery with associated residential unit.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for the award of costs was made by Mr John Scott against King's Lynn and West Norfolk Borough Council. This is subject to a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Main parties have had the opportunity to comment on the implications of the revised Framework during the hearing process.

4. The King’s Lynn and West Norfolk Borough Council Local Plan Review (2021 – 2041) is an emerging development plan document that is at an advanced stage. However, it has yet to be formally adopted by the Council and may still change. Furthermore, neither appeal party has drawn my attention to any policies within the emerging plan, albeit the Council has put to me that the policy considerations of pertinence to this appeal would not change under the emerging plan. I have no substantive reason to disagree, and so, the emerging plan is of limited weight in my decision.

Background and Main Issues

5. There has been a longstanding cattery use at White Dyke Farm. Planning permission for a new cattery building at the appeal site was granted in 2014, subject to a condition that required the cattery to be held, owned and occupied in conjunction with the associated dwelling of White Dyke Farmhouse (the Farmhouse). The relevant condition remains in effect having been reimposed on later Section 73 planning permissions in relation to the cattery.

6. The Farmhouse referred to in the relevant condition controlling the cattery's operations is within the appellant's ownership. The wording of the condition is such that the cattery's operations are tied to the Farmhouse. However, there is no separate condition/tie on the Farmhouse requiring that it must be occupied in connection with the cattery business. Therefore, the Farmhouse can be sold or used as an open market dwelling.

7. The proposal seeks full planning permission for the change of use of the appeal building to a cattery with an associated residential unit. In effect, this is to enable the cattery to operate independently and/or be sold separately to the Farmhouse.

8. The Council's reason for refusing the planning application related solely to the availability of alternative accommodation to serve the functional need of the cattery business. Subsequently, during this appeal the Council has expressed concerns with the financial viability of the cattery, and it confirmed at the hearing that the proposal should be refused on such grounds.

9. In light of the above the main issues are:

   - Whether the existing cattery enterprise is currently financially sound with a clear prospect of remaining so; and
   - Whether the need for the rural worker's accommodation could be met by existing dwellings within the locality.

Reasons

Policy Background

10. The appeal site is in a rural location, a considerable distance outside the nearest settlements of Feltwell and Hockwold cum Wilton. In a policy context, the site is located within the countryside as defined under the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy (adopted 2011) (the Core Strategy). The appeal building is situated amongst a very small cluster of existing residential uses. Despite, the presence of other adjacent residential dwellings, in the context of the Braintree court of appeal judgement[1], I find the appeal site is isolated due to its physical separation and remoteness from a settlement.

11. To promote sustainable growth the Council's spatial strategy (as set out in the Core Strategy) specifies a settlement hierarchy for new development and seeks to limit the development of new dwellings in the countryside.

12. Reflecting Paragraph 84 of the Framework, Policy DM6 of the Council's Site Allocations and Development Management Policies Plan (adopted 2016) (the SADMPP) provides circumstances whereby the development of rural workers housing will be permissible in the countryside. The policy establishes that new permanent dwellings should only be allowed to support existing rural based activities on well-established rural based enterprises, provided certain criteria are met.

13. Of relevance to the appeal scheme is that the need for a rural worker's dwelling could not be met by existing dwellings within the locality (Criterion 3b of Policy

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

DM6). Also of pertinence is Criterion 3di) of Policy DM6, this requires that the enterprise and the rural based activity concerned must have been established for at least three years, have been profitable for at least one of them, and is currently financially sound with a clear prospect of remaining so.

Financial Soundness

14. The appellant has provided financial accounts for the cattery for a five-year period (2019 – 2023), including balance sheets of relevant income and expenditures. These demonstrate the business to be operating at a very marginal profit level. In 2023 a profit of approximately £17,000 was made, as such, it has been demonstrated that the business has been established for at least three years and profitable for at least one.

15. However, based on the evidence before me 2023 was by far the most lucrative year for the cattery business. An accompanying letter from the appellant's accountant (dated August 2024) highlights that there was a marked improvement in the business' profits for 2023. This is explained as being due to a bounce in business following the removal of lockdowns associated with the Covid-19 pandemic, when the cattery was operating at full capacity. It is therefore stated that there is little room for an increase in profits. Furthermore, the accountant's letter sets out that based on typical working hours the appellant earns less than a living wage, even before tax and national insurance deductions are accounted for.

16. Notwithstanding that a future purchaser of the cattery may operate the business in alternative ways, I have been presented with no robust reasons to dispute the above financial findings that have been put forward, including the limited opportunity for the business to increase its profits.

17. A cattery at White Dyke Farm has been in operation in various forms for almost twenty years, including an expansion into the current appeal building approximately ten years ago. Still, this does not demonstrate that the business is financially sound with a clear prospect of remaining so. Rather I find that the reason that the business has been able to remain in operation is due to the appellant and his partners' personal circumstances, including a willingness for the business to operate whilst providing such low financial returns and based on their personal living arrangements. That the appellant's personal circumstances are crucial to the business' viability is reflected both in the accountant's evidence, as well as the view put forward by the appellant in the submitted Statement of Common Ground.

18. A local estate agent has valued the cattery property (alone) as being worth between £450,000 - £475,000[2]. This figure has not been disputed by the Council, while I have been presented with no reasons to doubt its accuracy. Given this valuation and the financial information before me, I am not convinced that the cattery business operations would be capable of covering a mortgage or rental costs associated with any future purchase/running of the business. Furthermore, the valuation of the cattery that has been presented is without the building also benefiting from an associated residential unit, which I consider is only likely to increase the value of the property.

[2] Sales Valuation from Elvin Estates – Dated 16 November 2023.

19. At the hearing the appellant suggested that a cash buyer may be more likely to purchase the appeal property if it were to also contain residential accommodation. Even if I were to agree with this view, it still does not convince me that the cattery business has a clear prospect of remaining financially sound. A cash buyer with an intention on continuing to run the cattery business would also still expect to receive a reasonable return on investment, which from the available evidence does not appear likely to be achievable.

20. Overall, there is no robust evidence before me to demonstrate that the cattery business would continue to be viable in the future were it not for the personal circumstances of the appellant. The proposal, however, is not for a personal permission. Nor am I convinced that a condition limiting it to a personal permission would be appropriate to make the proposed development acceptable in planning terms. Notably, the appellant has also indicated his intention to sell and move on from the property in the near future.

21. Consequently, based on the evidence before me, I do not consider that that the existing enterprise is financially sound with a clear prospect of remaining so. The proposal therefore conflicts with Policy DM6, namely the requirements at criterion 3d)i) of the policy.

22. The Council may not have refused the original application based on the on-going financial viability of the cattery business. Nevertheless, I must determine the proposal in accordance with the development plan, unless material considerations indicate otherwise.

Alternative Accommodation in the Locality

23. The appellant has suitably evidenced a need for a worker to be present nearby to the cattery throughout the day and night for operational reasons, including undertaking routine tasks and responding to unscheduled events.

24. The appellant has also recently provided a sale’s completion statement (dated 6 December 2024) and a recent council tax bill (January 2025) to demonstrate that the nearby Annexe building is no longer in his ownership. The Council confirmed at the hearing that based on this latest evidence it accepted the Annexe was no longer available for use in connection with the cattery’s operations. I have no reason to conclude differently.

25. The Farmhouse is a substantial detached property, set in a large plot that has been refurbished to a high standard. A valuation of the property from November 2023, suggests that the Farmhouse is worth between £750,000 - £800,000. Again, the valuation of the property is not disputed. Meanwhile, the Farmhouse, together with the cattery business, have been continually marketed for sale by a local estate agent since March 2024 at a price of £950,000 but have not sold.

26. The Farmhouse is currently let out by the appellant. The appellant informed at the hearing that it has been let out for several years to military personnel in connection with the nearby Royal Air Force base. It is currently said to attract a rental value in the region of £2,500 per calendar month. No detailed evidence has been submitted by the appellant to verify this, but given the scale and nature of the Farmhouse the rental value seems plausible.

27. The appellant has also provided several mortgage cost scenarios to demonstrate the likely financial implications of a mortgage on the Farmhouse, based on various deposit amounts. It is evident that the profits from the cattery operations would be insufficient to service a likely mortgage or the rental of the Farmhouse. Whilst as indicated, there appears to be little prospect of the business significantly increasing its profit levels. Consequently, I do not consider the Farmhouse to be a viable proposition to meet the continuing functional needs of the cattery business.

28. From the evidence before me, there are no other properties available nearby to the site that could suitably meet the functional needs of the cattery's operations. I therefore find that the need for the rural worker's accommodation could not be met by existing dwellings within the locality. In respect of this main issue there is no conflict with Policy DM6 of the SADMPP. Still, this does not overcome the proposal being contrary to the policy on the grounds of the enterprises' financial soundness.

Other Matters

29. White Dyke Farmhouse is a Grade II listed building. From the available evidence and my observations on site, I find its significance largely lies in its age, and its historic role, as well as its architectural value that articulates the agricultural heritage of the area. The listed building also derives significance from its arable landscape setting, which reflects its origins as a farmhouse and provides an important positive contribution to how the asset is viewed and appreciated.

30. There are several buildings adjacent to the Farmhouse including buildings that are likely to have been historically associated with it but have since been subject to modern interventions and converted to separate residential uses. Whilst additional buildings, including the appeal building have also more recently emerged. Nonetheless, each of the adjacent buildings maintain a rural vernacular and appear subordinate in scale and hierarchy to the listed Farmhouse.

31. Given the minor alterations that are proposed to the appeal building, and the nature of existing residential uses within the vicinity of the Farmhouse, I consider the appeal proposal would have a neutral impact on the setting and significance of the listed building, thereby preserving its special interest.

32. It is clear from the evidence before me that the appellant plays an active role in the local community and that the cattery is a well looked after and valued service, with several nearby residents expressing support for the proposed development. Still, local support for a proposal, or a lack of objections, is not suitable justification to allow development that is not in accordance with the development plan. Nor is compliance with various other development plan policies or a lack of other harm, for example in respect of the living conditions of neighbours or the character and appearance of the area.

33. Specifically targeted permitted development rights for the conversion of agricultural buildings to residential uses does not equate to support for the appeal proposal.

34. The Council has previously granted planning permission for other dwellings at the wider White Dyke Farmhouse site. I do not have the full background context of those permissions, including previous detailed planning histories of the relevant buildings or detailed benefits/justifications that were put forward for the proposed residential developments. Still from the presented information, it seems that there are some contextual differences, for example, the previous permissions involved

re-purposing historic buildings (seemingly curtilage listed). Accordingly, these previous permissions are not a suitable reason to allow the current proposal.

35. Similarly, my attention has been drawn to planning decisions involving rural enterprises at Black Dyke Farm and Fountain Stables. Again, the full background details of those cases are not before me. From the available information, despite, their proximity to the appeal site and some similarities there are also differences in context. For example, in terms of the precise nature of the enterprises. This matter was also dealt with under the appellant's previous appeal[3], whereby the Inspector set out that none of the examples quoted displayed the bespoke circumstances of the appellant's case. No suitable detailed evidence has been presented by the appellant for me to reach an alternative conclusion to the previous Inspector.

36. It has also been put to me that the cattery business is likely to fail in the future should the appeal scheme not be granted. Nonetheless, even if I were to approve the proposal, I am not satisfied the business is financially sound, with a clear prospect of remaining so. My decision therefore does not turn on this matter. Similarly, that the appellant may be unable to recoup his previous financial investments into the cattery business does not justify the proposed development.

37. Since the determination of the application the housing delivery tests (HDT) results for 2023 have been published. The HDT results suggest that the Council has a past delivery rate of 60% over the past three years, substantially below its housing requirement. Having regard to footnote 8 of the Framework, the appellant therefore argues that the appeal scheme should be determined in line with Paragraph 11d) of the Framework.

38. The Council, however, have an outstanding challenge with the Ministry of Housing Communities and Local Government in relation to its HDT results. Similar to the findings of the Inspector for a recent appeal[4], the Council has submitted plausible evidence to me that suggest the HDT results are inaccurate. The Council's presented evidence details its housing delivery position as near 90% over the past three years, it therefore contends that Paragraph 11d) is not applicable.

39. In any case, the existing Farmhouse is not tied to the cattery business. As such, the proposal would not deliver an additional open market dwelling, but instead one that would be tied to the existing cattery business. Accordingly, the benefits associated with the delivery of the proposed residential accommodation would be very limited. There would also be some socio-economic benefits associated with the development's construction works and through future resident's providing support for local services in the wider rural area. Again though, given the nature of the proposal, such benefits would be very limited.

40. Therefore, even if I were to find that the application of Paragraph 11d)ii were to be appropriate, the adverse impacts of granting permission for the proposal in an unsustainable location would significantly and demonstrably outweigh the benefits against the policies in the Framework taken as a whole.

41. The heaths, fens, estuaries and coasts of Norfolk are internationally recognised wildlife assets. The appeal site lies within the zone of influence of the Breckland Special Protection Area (SPA) and Special Area of Conservation (SAC), the

[3] APP/V2635/W/17/3170872 – Decision date 27 July 2017
[4] APP/V2635/W/24/3344096 – Decision date 29 January 2025

Norfolk Valley Fens SAC, and the Wash SPA and Ramsar site (collectively the habitat sites). These are designated European sites under the Conservation of Habitat and Species Regulations 2017, as amended (the Habitat Regulations).

42. The habitat sites, and species that rely upon them, are at risk from increased recreational pressures arising from new housing and tourism growth. The appellant has completed an agreement under Section 111 of the Local Government Act 1972 and paid a relevant financial contribution towards the Norfolk Green Infrastructure and Recreation Avoidance Mitigation Strategy. This is to be used to mitigate the potential recreational impacts of the proposed development on the relevant protected habitat sites. However, as I am dismissing the appeal on other grounds it has not been necessary for me to undertake an appropriate assessment under the Habitats Regulations, to determine whether the proposal would adversely affect the integrity of the habitat sites.

43. The appellant's frustrations with the Council's approach to dealing with his past applications compared with other development proposals/breaches of planning control in the nearby area are noted, including claimed prejudices against him/his partner. I have though determined the appeal scheme based on its own merits.

Conclusion

44. For the reasons outlined above, the appeal scheme conflicts with the development plan taken as a whole and there are no material considerations, including the approach of the Framework, that justify a decision other than in accordance with it. Accordingly, the appeal is dismissed.

Lewis Condé

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J. Scott – Appellant

Mr D. Rolph – Appellant's Partner

Mr C. Smith – Planning Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr K. Wilkinson – Senior Planning Officer

INTERESTED PARTIES:

Mr A. Lambert – Local Resident

Mr G. Clouston – Local Resident

Mrs. J. Anderson – Local Resident

LATE EVIDENCE

Document submitted by Council:

1. Appeal Decision: APP/V2635/W/24/3344096 (decision date 29th January 2025) – Land adjacent to Skye Gardens, Feltwell IP26 4EY.