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## Appeal Decisions

Hearing held on 28 January 2025

Site visit made on 28 January 2025

**by K Lancaster BA (hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 March 2025

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**Appeal Ref: APP/P1045/W/24/3353205**

**North Park Farm, Whitworth Road, Darley Dale, Derbyshire DE4 2HJ**

- 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 Ms H Lowe against the decision of Derbyshire Dales District Council.
  - The application Ref is 24/00048/FUL.
  - The development proposed is the use of land and building to provide equine rehabilitation and foaling livery and siting of mobile home.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 and updated it on the 7 February 2025. In the interests of natural justice, and to ensure neither of the main parties were prejudiced by this matter, I consulted both parties on the changes to the Framework, and this has informed my determination of the appeal.
3. The Council changed the description of development as stated in the application form and as set out in the banner heading above. The revised description is the *“change of use of land and building to provide equine rehabilitation and foaling livery, siting of mobile home as temporary workers accommodation and extension of hardstanding at site access”* and this was used by the Council in advertising the application for the statutory consultation. The appellant has also used this revised description in the appeal form. The revised description more accurately defines the scheme seeking planning permission and I have therefore determined the appeal on this basis.
4. From my understanding of the evidence submitted, part of the appeal site is currently used for residential accommodation, and it was confirmed by the appellant at the hearing that this is where they currently reside. This use is the subject of an enforcement notice. An appeal<sup>1</sup> against the enforcement notice was determined in February 2022 and the notice was upheld, requiring amongst other things, the use to cease. However, this appeal relates to a residential use in the form of the siting of a new mobile home and proposes an alternative use of the existing building. I have therefore considered the appeal accordingly.

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<sup>1</sup> Appeal Ref: APP/P1045/C/20/3263159

5. The appeal is supported by additional information, which includes a document titled 'Appellant Supporting Letter' and letters of support from Holly Shann (Veterinary Physiotherapist), Deborah Thomas (Senior Equine Vet Nurse), Emma Hallam (Saddler), Craig Rogers (Farrier) and Georgina Parkin (Vet).
6. The Procedural Guide for Planning Appeals makes clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. However, the additional information provided seeks to address the Council's reason for refusal and does not amend the proposed development the subject of the appeal. Accordingly, under the principles established by the Courts in *Holborn Studios Ltd*<sup>2</sup> the amendment does not involve a substantive difference or a fundamental change. Furthermore, having regard to the procedural tests, I do not consider that any other party would be prejudiced by my acceptance of it. I have therefore determined the appeal based on the revised information.
7. I have also dealt with another appeal<sup>3</sup> on this site. For the avoidance of doubt, whilst that appeal site is the same, the proposals are not. Therefore, whilst I considered the evidence submitted in both appeals together at the hearing, both appeals have been considered on the basis of the evidence submitted separately in each case. The appeals are the subject of separate decisions.

### **Main Issue**

8. The main issue 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**

9. The appeal site, North Park Farm comprises of a landholding of approximately 40 acres. It currently functions as a livestock farm whilst accommodating supplementary grazing of horses owned privately by the appellant. The land consists mainly of fenced grazing land with a small area of woodland. There are currently stables, a small and enclosed exercise area, an all-weather training area, horse solarium and turnout paddocks. Within the existing building, there are also facilities for the operation of a dog grooming business. However, at the hearing the appellant confirmed that they are no longer involved in this activity.
10. The site is located in open countryside, between the villages of Darley Dale and Northwood. The surrounding rural area is characterised by generally open, sloping topography with views across the attractive landscape.
11. The proposed equestrian business at North Park Farm, would comprise of a rehabilitation livery and seasonal foaling livery. In addition to the equestrian activity the appellant is also proposing to increase the numbers of breeding ewes and the production of lambs.
12. The proposal also seeks a residential use at the site which includes the siting of a mobile home for a temporary accommodation for a period of three years to enable the existing farming enterprise to continue developing and to operate a new

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<sup>2</sup> *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

<sup>3</sup> Appeal Ref: APP/P1045/W/24/3352031

business venture offering equine rehabilitation livery and foaling livery. The appellant stated that the proposed temporary mobile home as rural workers accommodation is necessary for the management and operation of their proposed enterprise, with particular emphasis placed upon the need to provide round the clock care for the horses within the rehabilitation livery.

### *Functional Need*

13. The Framework states that the development of isolated homes in the countryside should be avoided unless there is an essential need for a rural worker to live permanently at or near their place of work. It is common ground between the main parties that the appeal site is not within a settlement and, consequently, is in the countryside for policy purposes.
14. Policy HC13 of the Derbyshire Dales Local Plan 2017 (the DDLP) states that the District Council will support proposals for the provision of dwellings to meet the needs of agricultural, forestry or other rural based workers where it meets all the criteria set out in the policy. Criterion (a) of the policy requires that it needs to be demonstrated that there is a clearly established functional need.
15. The Planning Practice Guidance<sup>4</sup> (the PPG) advises that considerations which may be taken into account when determining whether there is an essential need to live on, or near, the site can include to ensure the effective operation of the enterprise for instance, where farm animals or agricultural processes require on-site attention 24-hours a day and where, otherwise, there would be a risk to human or animal health, or from crime, and the degree to which there is confidence that the enterprise will remain viable for the foreseeable future.
16. The keeping of horses including activities such as feeding, watering and exercising could 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 would not be sufficient justification for someone to live on the site. However, the Supporting Appraisal<sup>5</sup> (the SA) submitted with the application states that the rehabilitation livery would involve the specialist management and care of horses for a minimum period of six-weeks and that each horse would need approximately 2 hours care per day. The evidence which was provided indicates that up to four horses would be cared for at any one time, with an additional foaling mare. The appellant contended at the hearing that this type of activity requires an on-site presence.
17. The evidence before me and that I heard during the hearing, indicates that supervisory requirements would be increased when the equestrian element of the proposed business 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. However, this is intended to be a small-scale operation, with the SA and further supporting evidence only indicating that this would be approximately one foaling mare per annum. Therefore, whilst there are likely to be times of the year when an increased presence would be required, this would only amount to a small number of days or weeks per year in worse-case situations.

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<sup>4</sup> Paragraph: 010 Reference ID: 67-010-20190722

<sup>5</sup> Temporary Siting of a Rural Worker's Dwelling - Supporting Appraisal

18. Furthermore, insemination by artificial means would enable the appellants to know when foaling is likely to occur, such that preparations could be made for increased surveillance. Consequently, 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 not be insufficient to justify a 24-hour residential presence, all year round.
19. In respect of the rehabilitation livery, I note the evidence provided by the appellant which states that horses on rehabilitation livery require close supervision. They also state that the vast majority of rehabilitation horses are valuable and will have complex veterinary health histories, which requires someone to be on site and within sight and sound of the horses. The appellant further stated that it is the nature of the supervision required that gives rise to the need for 24-hour presence and that the number of horses is not the determinant of need.
20. I have also had regard to the third-party representations<sup>6</sup> which support the appellant's position that an on-site presence is an expectation of a rehabilitation livery business. They also identify some of the health risks associated with the keeping of horses. However, I have limited evidence before me which details the frequency or likelihood of complications occurring to be satisfied that on the basis of the small number of horses that would be being cared for within the rehabilitation livery, that it is likely to require an on-site residential presence. On this basis, whilst I note that the appellant considers that without a residential presence on site to provide 24-hour care and supervision, the business could not succeed, very little substantive evidence has been provided to support this claim
21. The SA states that although CCTV has already been installed, it is not possible to monitor every horse in every box, plus the paddocks and other areas around the site for welfare or security purposes. However, based on the small number of horses which would be stabled at any one time, I have not been presented with any substantive evidence that the suitability or effectiveness of remote monitoring has been fully considered, such that I would be able to conclude that the equestrian use could not be managed remotely whilst still ensuring the security, safety and welfare of the horses.
22. Whilst I have no reason to doubt that a permanent on-site presence may well be desirable to clients, I have not been provided with convincing evidence that such accommodation would be essential for the enterprise. I accept that there may be situations where horses need a rapid response in order to alleviate, minimise or remove risk of injury arising through illness or accident. However, I have not been provided with any compelling evidence to suggest that this was any more likely overnight than during the day when staff would reasonably be present on site. Instead, the evidence presented was, at best, anecdotal in these respects and insufficient to lead me to conclude that it is essential for the appellant to live on-site.
23. In coming to this view, I have had regard to the Animal Welfare Act 2006 which states that it is an offence to cause unnecessary suffering to any animal. The Act also contains a Duty of Care to animals which means that anyone responsible for an animal must take reasonable steps to make sure that the animal's needs and its welfare are met. I have been provided with a list of potential health

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<sup>6</sup> Third party representations submitted by Holly Shann (Veterinary Physiotherapist), Deborah Thomas (Senior Equine Vet Nurse), Emma Hallam (Saddler), Craig Rogers (Farrier) and Georgina Parkin (Vet).

complications, which I accept may be more prevalent in rehabilitating or foaling horses. However, based on the proposed number of horses which would be accommodated at the appeal site at any one time, on balance, I am not persuaded that these such occurrences would be likely to occur in all horses being cared for nor that they would occur frequently so that they would justify an on-site presence. I therefore find that it has not been demonstrated that there is a functional need for a worker to live on-site.

### *Financial Viability & Employment Need*

24. Policy HC13(b) requires that the need relates to a full-time worker or one who is primarily employed in agriculture, forestry or other rural based enterprise which needs to be located in the area and does not relate to a part-time requirement.
25. Policy HC13(c) requires that the unit and the agricultural, forestry or other rural based enterprise has been established for at least three years and has been profitable for at least one of them, is currently financially sound and has a clear prospect of remaining so. It further states that where this need is unproven or a new business is being established, a temporary dwelling (such as a mobile home) may be permitted to allow time to establish that there is a genuine functional and financial need for a permanent dwelling. A temporary dwelling will only be permitted for a maximum period of 3 years.
26. In terms of consistency between national and local policy, the Framework does not require that regard must be had to financial considerations. However, there is nothing to preclude local development plan policies from setting out how the question of essential need is to be judged.
27. It was confirmed at the hearing that the enterprise is a new enterprise, with the exception of the lamb breeding which already takes place. The financial projections provided with the application, and additional information submitted with the appeal sought to demonstrate that the enterprise would be profitable from Year 1, with profits rising in both Year 2 and Year 3. However, the information provided lacks sufficient detail, for example figures quoted for 'Direct Costs' includes no breakdown of these costs and what they relate to. At the hearing, the appellant confirmed that these relate to essential items such as bedding and feed for the animals, but these figures do not appear to be based upon any substantive evidence of likely costs and do not reflect the additional financial evidence<sup>7</sup> provided at appeal stage.
28. In terms of the labour requirement of the enterprise, the SA concluded that there is a requirement for 1.94 full-time equivalent (FTE) workers. The Council do not dispute this calculation. However, there are a number of discrepancies within the figures relating to staffing costs. At the hearing, the appellant confirmed that there are currently two full-time equivalent employees working at the appeal site. They also indicated that there is a third employee who assists with maintenance tasks on an ad-hoc basis. The financial projections provided do not appear to account for the employment of a full-time person, and the staffing costs included in Year 1 of just £2,000 does not appear to be based on any substantive evidence, nor does it reflect the indicated labour requirement.

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<sup>7</sup> Appeal Statement (Appendix 2)



29. Notwithstanding the previous experience of the appellant, the rehabilitation and foal livery is an entirely new enterprise. Based on Appendix 2 of the appellant's statement of case, most of the income is to be derived from the rehabilitation livery. The projected profit from four horses is stated as being approximately £46,000 per annum. However, these figures are based upon an occupancy rate of 100%, with no variation made for vacancy periods. Therefore, whilst this may be achievable once the business has become established, I have not been presented with any compelling evidence to demonstrate that this would be a realistic prospect.
30. The evidence provided in writing and at the hearing indicated some research had been undertaken, but no specific examples or figures were provided to support this position. The appeal is not supported by any detailed evidence or market research to demonstrate a local need for the services that would be provided and therefore whether or not this is a realistic projection, bearing in mind there will be a period of time in which the enterprise will need to become established and build its reputation. Furthermore, although the evidence indicates that there has already been investment into the appeal site, it is not clear whether any new facilities would be required and the likely costs of providing these.
31. In terms of supporting evidence for the lambing component of the new enterprise, the SA lacks detail. For example, there is no indication of stock numbers and/or projected growth. There are no details about past revenue. Given the appellant's presence on site since 2015, there are no accounts or details of activities which pre-date the application submission. The breeding of lambs, is stated within the appeal evidence as generating a small profit, based on 30 sales per year. However, no income details have been provided and the projected figures for Year 1 indicate a potential profit in the region of just £3000 per annum.
32. Nonetheless, the appellant states that it is anticipated that within 3 years the business will be established to the point where the erection of a permanent dwelling can be justified. However, the evidence submitted does not provide adequate detail to demonstrate that the projections which have been provided are based upon sound evidence. Consequently, the weight given to this evidence is limited.
33. This notwithstanding, the PPG recognises that there may be a degree of uncertainty with new enterprises and indicates that it may appropriate to consider granting permission for a temporary dwelling for a trial period. As it has not been demonstrated that there is an essential need for a residential use or accommodation at the site for any other reason, and there is not a direct correlation between the financial viability of an enterprise and whether is necessary for a worker to be resident at the site, I do not consider that a temporary permission would overcome these concerns and it would still be difficult to establish whether the enterprise is viable in the longer term.
34. I acknowledge that Policy HC13 makes provision for rural enterprises to develop over time, 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. On this basis, it is not possible to conclude that the business is likely to

become financially sound within a temporary period of three years. Therefore, a temporary consent would not be appropriate in this case.

#### *Alternative Accommodation*

35. Policy HC13(d) of the DDLP requires it to be demonstrated that the functional need cannot be fulfilled by another existing building on the unit or within the locality that could be converted, or another existing dwelling on the unit or within the locality which is suitable and available for occupation by the worker concerned.
36. Notwithstanding my concerns in relation to whether it has been demonstrated that there is a functional need, in the event that a functional need could be demonstrated, this criterion requires evidence to demonstrate that the functional need cannot be met by an existing dwelling or building, either within the unit or locality.
37. There are a limited number of existing buildings within the existing enterprise. These are currently used in association with the existing enterprise and therefore unlikely, based on the evidence before me to be available for conversion.
38. In terms of other dwellings in the locality, the appeal site lies between the settlements of Darley Dale and Northwood, where there are a small number of dwellings interspersed along Whitworth Road. I have not been presented with any substantive evidence to demonstrate the availability and/or suitability of other dwellings within the local area. However, the appellant maintains the position that the proposed residential use, by way of a mobile home needs to be in sight and sound of the stables to ensure welfare of the animals being cared for which these existing properties in the area would not be able to provide.
39. My attention has been drawn to the existence of a planning permission<sup>8</sup> for the erection of a new dwelling on land within the same ownership as the enterprise. This would be located a short distance (approximately 160 – 200 metres) from the appeal site. In *Schneck*<sup>9</sup> the Court held that *“the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect”*. At the hearing it was stated by the appellant that the intended occupier of this dwelling, once constructed, is their father. However, I have very limited evidence to support this claim. Therefore, whilst this dwelling might be unavailable, it still represents a realistic fallback option given its location in relation to the appeal proposal.
40. Nonetheless, I accept that there is also some dispute between the main parties as to whether a dwelling located this distance from the unit would be able to meet a functional need, as it would not be within sight and sound of the stables. However, whilst I understand the appellant’s desire to live as close as possible to their enterprise, for the reasons set out above, I have not been provided with any compelling evidence that this requires an on-site presence at all times, and that the need could not be met through off-site monitoring and a location that provides easy access to the site in the event of an emergency situation arising.
41. Therefore, I find that insufficient information has been provided by the appellant to satisfy this part of the policy and to satisfactorily demonstrate that there is no

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<sup>8</sup> Planning Application Ref: 22/00529/FUL

<sup>9</sup> *Schneck v SSHCLG & West Berkshire DC* [2022] EWHC 3335 (Admin)

suitable or available accommodation in the locality that would meet any functional need arising from the operation of the enterprise.

### *Other Criteria of Policy HC13*

42. The Council did not raise any specific concerns in relation to the remaining criterion of Policy HC13 (e, f and g), which appears to be common ground between the main parties. Therefore, I have not considered these matters in detail.

### *Conclusion*

43. I therefore conclude that, on balance, it has not been demonstrated that there is an essential need for a temporary residential use at the site including the siting of a mobile home 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 Policy HC13 of the DDLP for the reasons set out above.

### **Other Matters**

44. There is an established vehicular access from Whitworth Road and proposals to improve visibility and manoeuvrability at the access have already been submitted. The appellant advises that it is not anticipated the proposed use will materially increase traffic generation and that there is ample parking space already which would be retained. Subject to the imposition of suitably worded conditions, the Council has not raised any highway safety concerns in relation to increased traffic to and from the site. Based on the evidence before me and my own observations at my site visit, I see no reason to disagree.
45. At the hearing I sought clarification from the main parties in relation to the proposed works to the access. The appellant states that the works proposed as part of the appeal proposal, have already been approved under a separate application<sup>10</sup>. This is disputed by the Council who have drew my attention to works which have been undertaken and which go beyond those shown on the proposed plan. Nonetheless, any unauthorised works which have been undertaken are not within my remit which is to consider the appeal based on the plans which have been provided. The Council did not provide me with any specific concerns regarding the access arrangements, and subject to the imposition of planning conditions, requested by the Local Highway Authority, I am satisfied that the proposal will not cause harm to highway safety.
46. The Grade II Listed building known as Stancliffe Hall<sup>11</sup> is located close to the appeal site. In considering whether to grant planning permission, I have been mindful of my statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.
47. The potential for the appeal proposal to impact on the setting of this listed building has been considered by the Council but they are satisfied that the proposed development and associated activity would not adversely impact upon the significance of the listed building or its setting, due to the small scale of the proposed development and the existing agricultural character of the site. Having

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<sup>10</sup> Planning Application Ref: 23/01265/VCOND

<sup>11</sup> List Entry Number: 1248279



considered the nature of the appeal proposal and relationship of the appeal site and the listed building, I am satisfied that no harm to the setting of this building would arise.

### **Planning Balance**

48. It is not disputed that the Council cannot currently demonstrate a five-year supply of deliverable housing land. Where relevant policies are out of date, Paragraph 11 of the Framework directs that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development or that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
49. Although the DDLP dates from 2017, the weight to be attached to it does not hinge on its age because the Framework states that due weight should be given to relevant policies according to their degree of consistency with the Framework. In this regard, the Framework advises that isolated homes in the countryside should be avoided unless 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
50. For the reasons set out I above, I have found that it has not been demonstrated that there is an essential need for temporary rural workers accommodation at the appeal site, having regard to the functional need and viability of the enterprise. This conflicts with Policy HC13 of the DDLP, and Paragraph 84 of the Framework which I attribute significant weight to.
51. Paragraph 88 of the Framework says decisions should enable the development of agricultural businesses. However, the weight I give to the benefits in these respects is tempered by the absence of any financial evidence to show the business is a viable proposition or that it could become one within 3 years.
52. This leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the limited benefits. The presumption in favour of sustainable development therefore does not apply to this case.

### **Conclusion**

53. The proposal does not accord with the development plan as a whole and there are no other considerations of sufficient weight that indicate that I should take a different decision other than in accordance with it. I therefore conclude that the appeal should be dismissed.

*K Lancaster*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|              |                          |
|--------------|--------------------------|
| Mr R Yarwood | Agent                    |
| Ms H Lowe    | Appellant                |
| Ms D Thomas  | Advisor to the Appellant |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|             |                                            |
|-------------|--------------------------------------------|
| Mr M Joyce  | Interim Development Management Team Leader |
| Mr G Treen  | Enforcement Team Leader                    |
| Mr J Barber | Barrister                                  |

### **THIRD PARTY REPRESENTATIONS:**

|           |                  |
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| Mr J Wood | Interested Party |
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## **Documents Submitted at Hearing**

Report by Kernon Countryside Consultants Limited (dated 2 April 2024)

## **Documents Submitted After the Hearing**

Drawing Ref: H.24.01 (Proposed Layout of Site Entrance)

Decision Notice for 23/01265/VCOND