



Appeal Decision

Hearing Held on 13 November 2018

Site visit made on 13 November 2018

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2018

Appeal Ref: APP/N1025/W/18/3199408

Land West of Home Farm Close, Ockbrook DE72 3SQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr H Fitzhugh against the decision of Erewash Borough Council.
 - The application Ref ERE/0917/0026, dated 10 July 2017, was refused by notice dated 24 November 2017.
 - The development proposed is described on the Notice of Decision as "erection of a bungalow to act as a permanent agricultural workers dwelling and the retention of an existing sow farrowing house".
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Decision

1. The appeal is allowed and planning permission is granted for erection of a bungalow to act as a permanent agricultural workers dwelling and a sow farrowing house at Land West of Home Farm Close, Ockbrook DE72 3SQ in accordance with the terms of the application, Ref ERE/0917/0026, dated 10 July 2017, subject to the conditions in the Schedule attached to this Decision.

Procedural Matters

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.
3. The description of the development varies between the application form and subsequent documents. The description in the heading above has been taken from the Council's Notice of Decision which is also reflected in the Statement of Common Ground. However, that description refers to the "*retention of an existing sow farrowing house*". In granting planning permission, I have removed the reference to "*...retention of an existing...*" as this is not an act of development. In any event, I saw that the sow farrowing house was in place at the time of my site visit.

Application for costs

4. At the Hearing an application for costs was made by Mr H Fitzhugh against Erewash Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The proposed development is within the Green Belt. I therefore consider that the main issues in this appeal are:
 - Whether the proposal is inappropriate development in the Green Belt and the effect on openness;
 - Whether there is an essential agricultural need for a dwelling on this site; and
 - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether Inappropriate Development and Openness

6. The appeal site is in the open countryside and is located within the Green Belt. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. In addition, Paragraph 79 of the Framework seeks to avoid the development of isolated homes in the countryside, unless, amongst other things, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
7. As a new residential building in the Green Belt, the proposed dwelling would be inappropriate development. Although modest in scale, the proposed dwelling and associated parking would reduce the openness of the Green Belt. I note that the Council consider that the dwelling would not have an adverse impact on the landscape or the character and appearance of the area, but this would not outweigh the harm that would arise in respect of openness and the purposes of the Green Belt.
8. Under the terms of paragraph 145 of the Framework, the farrowing house is not inappropriate development in the Green Belt as it is a building for agriculture.

Agricultural Need

9. **The appellant's livestock farming business operates from a number of separate locations.** The appeal site is part of a parcel of land at Ockbrook, which also includes a cattle building as well as the breeding of sheep and pigs. The management of livestock includes the movement of cattle close to calving from land at Borrowwash where they can then be housed and supervised in the building at Ockbrook. After calving, the mother and calf are then moved back to Borrowwash **when they don't need such close supervision.**
10. A temporary 3 year planning permission¹ has been granted for a mobile home at Ockbrook. Whilst this permission has expired, I note that the temporary permission was granted on the basis of advice from **the Council's agricultural** consultant that a viable business had not been proven at that time but that the

¹ Application ref: ERE/0514/0001

business had the potential to become viable. In this regard, I note that the **appellant's agricultural** consultant has stated that financial results confirm that the business is now viable and that profitability is sufficient to justify the modest scale of the proposed dwelling². Whilst the nature of the business may have changed from that proposed some time ago, this does not negate the evidence that the ongoing business is viable.

11. The Council consider that the case for an agricultural workers dwelling is driven by the cattle operation of the business. There was some debate at the Hearing about the number of cattle associated with the operation, including reference to Defra monitoring **data**. **However, the Council's agricultural** consultant accepted that even with a reduced number of cattle, the provision of a dwelling should be actively considered. I also note that the Council has queried the extent of calving at the appeal site, although it has not provided substantive evidence to contradict the evidence provided by the appellant. On the basis of the evidence before me, I find that a dwelling is justified in respect of the cattle operation of the business.
12. The Council does not accept that the pig and sheep operation at Ockbrook justifies an agricultural workers dwelling. However, even if I were to accept **the Council's position on this issue, this does not negate the** requirements of the cattle operation.
13. **A central tenet of the Council's case is that there are dwellings available** elsewhere which could meet the operational requirements of the agricultural enterprise. The Council has highlighted a planning permission for a dwelling on land at Borrowwash. However, this permission is of some age, and although it was stated at the Hearing that development of the dwelling may have commenced, it was confirmed that it was not completed as the site was affected by flooding. This reflects what I saw when I visited the land at Borrowwash. At the Hearing, the Council accepted that the permission at Borrowwash had lapsed and that the site was in an area at risk of flooding. The evidence therefore suggests that the site at Borrowwash does not represent a suitable alternative to the appeal scheme due to the status of the planning permission and issues of flood risk.
14. The Council has also referred to dwellings available in villages in the vicinity of the various plots of land which make up the business, particularly at Ockbrook **and Borrowwash**. **However, the Council's agricultural consultant confirmed that** these dwellings would not be suitable as they would not be within sight and sound of the livestock.
15. The potential to provide a dwelling on land at Belper has also been considered. However, this would not be as suitable as the appeal site due to the resulting transportation distance for cattle. It was also emphasised by the appellant that there were problems of capacity at that site.
16. Drawing the above together, on the basis of the evidence before me there is a clear operational requirement for a dwelling at the appeal site to support an ongoing and viable agricultural enterprise. I therefore conclude that an essential agricultural need for a dwelling on the site has been demonstrated.

² e-mail from David Hughes to Graham Wraight, 13 October 2017.

Overall Conclusions and Green Belt Balance

17. The proposed dwelling constitutes inappropriate development in the Green Belt, and would reduce the openness of the Green Belt. In accordance with paragraph 144 of the Framework, I give substantial weight to the harm to the Green Belt. However, based on the evidence before me, there is an established essential need for a permanent residential presence on site. The proposal would therefore meet the circumstance of Paragraph 79(a) of the Framework in respect of isolated homes in the countryside, and would also comply with the policies of the Framework in respect of supporting a prosperous rural economy. I attach very substantial weight to this essential requirement and the benefits arising from the proposal.
18. I find that the other considerations in this case, namely the essential need for a rural worker to live on the site, clearly outweigh the harm to the Green Belt I have identified. Very special circumstances necessary to justify the development have therefore been demonstrated. The proposal would therefore not conflict with Policy 3 of the Erewash Core Strategy 2014 with regard to consideration of the statutory purposes of the Green Belt and saved policies GB1 and GB8 of the Local Plan 2005 in respect of very special circumstances and agricultural development in the Green Belt. Due to the identified very special circumstances, the proposal would also not conflict with the Framework in respect of protecting Green Belt land.

Other Matters

19. Access to the appeal site is via a track which passes between two dwellings on the residential estate of Home Farm Close. Comments raised locally have referred to issues of access and parking. However, the identified issues relate to traffic generated by the existing farming operations. There is no substantive evidence that either the farrowing house or the proposed dwelling would lead to a material increase in traffic movements. I also note that the Highway Authority has not objected to the proposal. On the basis of what I have seen and read, the matter of access and parking does not weigh against the proposal. I also note the concerns in relation to noise and disturbance associated with the construction of the dwelling, however this would be temporary in nature and can be mitigated by a condition limiting the hours of construction activity.
20. I have had regard to the concerns expressed in relation to a history of odour as well as problems arising from animals kept in fields adjacent to housing and other properties. However, these matters relate to the management of the farm and do not fall within the remit of this planning appeal.
21. Concern has also been raised that the proposal would establish a precedent for future development within the Green Belt. However, each proposal should be assessed on its particular merits, and due to the specific issues raised by this proposal it would not necessarily establish a precedent for the consideration of other development.

Conditions

22. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in

Planning Permission. As a result, I have amended some of them for clarity, including specific reference to the proposed dwelling where appropriate.

23. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of good planning and certainty. Conditions requiring details of materials to be used in the construction of the dwelling as well as landscaping and boundary treatment are required in the interests of character and appearance. Controls over the hours of construction and delivery are required in the interests of the living conditions of nearby residents. The provision of gas protection measures is appropriate in the interests of health and safety. The provision of car parking is appropriate in the interests of highway safety.
24. The dwelling has been permitted on the basis of an essential agricultural need, and it is therefore necessary to restrict its occupation in respect of that purpose. A condition to remove permitted development rights for the dwelling is also appropriate in the interests of character and appearance and due to the exceptional circumstances arising from the countryside location of the development in the Green Belt.

Conclusion

25. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be allowed.

David Cross

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan 1:2500 dated May 2017
 - Block Plan 1:500 dated May 2017
 - Proposed Elevations, Drawing Number HF17/1
 - Farrowing Unit Floor Plan and Elevations dated May 2017.
- 3) Construction of the dwelling above slab level shall not commence until details of the proposed materials to be used in the external construction of the dwelling have been submitted to, and approved in writing by, the local planning authority. The development shall then only be undertaken in accordance with the materials so approved.
- 4) The dwelling shall not be occupied until full details of both hard and soft landscape works including a programme for implementation have been submitted to, and approved in writing by, the local planning authority. The works shall be carried out as approved. Any trees or plants which, within a period of 5 years from the completion of the development or the approved scheme (whichever is the later) die, are removed or become

seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 5) The dwelling shall not be occupied until a detailed scheme for the boundary treatment of the site, including position, design and materials (and to include all boundaries or divisions within the site) has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be completed before the dwelling is first occupied or such other timetable as may first have been agreed in writing with the local planning authority and shall be retained on site as approved throughout the lifetime of the development.
- 6) Construction work and/or deliveries to the site shall take place only between 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7)
 - a) The dwelling hereby approved shall be provided with basic gas protection measures to comprise a minimum 2000 gauge polyethylene membrane (resistant to carbon dioxide and methane) with all seams taped. The membrane shall be taken across the wall cavity, fitted with a cavity tray and all services passing through the membrane will be sealed to the membrane.
 - b) Prior to the dwelling being brought into use a validation report detailing that the above gas protection steps have been taken shall be submitted to the local planning authority.
- 8) The dwelling shall not be occupied until space has been laid out within the site for 2 cars to be parked, and that space shall thereafter be kept available at all times for the parking of vehicles.
- 9) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 10) Notwithstanding the provisions of Parts 1 and 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) the dwelling shall not be extended or altered externally nor shall any incidental building, structure, or means of enclosure be erected without the prior grant of planning permission.

End of Schedule

Appearances

FOR THE APPELLANT:

Philip Hulland BSc(Hons) MRICS
Ruth Woodcock

Bagshaws
Neil J Bland Ltd

FOR THE COUNCIL:

Steven Mott BA(Hons) DipTP MRTPI
David Hughes

Erewash Borough Council
Agricultural Consultant

INTERESTED PERSONS:

Elizabeth Ison

Carly Fitzhugh

Documents Submitted at the Hearing

1. Highlighted extracts of correspondence from the Council's Agricultural Consultant, provided by the appellant.
2. Letter from Scarsdale Vets (undated).
3. 3 years Farming Accounts.

Documents Received Following the Hearing (by request of the Inspector)

4. Letter from Scarsdale Vets, dated 7 November 2018.
5. Copies of the plans considered by the Council.
6. Confirmation from the appellant in respect of the correct plans, dated 19 November 2018.



Costs Decision

Hearing Held on 13 November 2018

Site visit made on 13 November 2018

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2018

Costs application in relation to Appeal Ref: APP/N1025/W/18/3199408 Land West of Home Farm Close, Ockbrook DE72 3SQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr H Fitzhugh for a full award of costs against Erewash Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for development described on the Notice of Decision as "erection of a bungalow to act as a permanent agricultural workers dwelling and the retention of an existing sow farrowing house".
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr H Fitzhugh

2. The need for an agricultural workers dwelling was established in 2014. The question then was whether the business was viable in order to allow the use to continue. Expert evidence from Neil Bland and the expert appointed by the Council both agree that on-site presence is needed and that the business is viable.
3. In e-mail correspondence from the Council to Neil Bland of 19 October 2017, it is reported that the Council's agricultural consultant has advised that in his opinion the number of cows stated justifies a permanent residence at Home Farm Close in the absence of a dwelling at Borrowash. This is also reflected in the comments from the Council's agricultural consultant to the Council in his e-mail of 3 November 2017.
4. So, given the acknowledgement on the need for a dwelling, agreement as to the viability of a business and the Council's apparent unwillingness to accept the expert advice, we would like to seek a full award of costs.
5. The situation is exacerbated by the unwillingness of the Council to inspect stock when questioning the numbers.
6. Unreasonable behaviour has been demonstrated by going against expert opinion and misleading comments in respect of the previous consent in respect of viability.

The response by Erewash Borough Council

7. The Planning Practice Guidance states that we should all meet our own costs.
8. The Council has engaged positively and proactively at all stages from validation through to consultation, encouraging the appellant to submit further evidence to justify his case.
9. In respect of the requirement for an agricultural workers dwelling in 2014, it **wasn't clear how the business case behind that approval, or how the business itself, had evolved or changed.** Expert evidence has been discussed at length in respect of need and viability of the business. This is the reason for having a Hearing and it is only after discussion and questioning that comments have **been made by the Council's expert witness.**
10. The application was very complex with numerous sites which are intricately linked. We have to base the decision on the evidence before us and, as **articulated by the Council's expert witness, there are clear matters** within the submission to justify the decision. The Council did take on board the full comments of the expert witness in the planning balance.
11. To conclude, the Council has evidenced, rationalised and defended its decision. It has acted in a cooperative manner with appropriate dialogue. Therefore an award of costs is requested to be refused.

The response for Mr H Fitzhugh

12. Any ambiguity as to the position in relation to the 2014 consent is due to the local planning authority. The suggestion of being positive and proactive was also made in 2014, which has not been the case in this instance.
13. **The Council's expert witness' comments here reflect the views expressed in e-mails previously.** The suggestion of the case being particularly complex is questionable. For that reason the Council engaged an agricultural advisor and the suggestion of an evidenced decision seems at odds with the advice received by the Council.

Reasons

14. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
15. In support of the proposal, evidence had been provided by the applicant to **demonstrate the viability of the business. This was accepted by the Council's agricultural consultant** during the course of the application and this was restated during the Hearing. Whilst there may have been some variation from the business case relating to the 2014 permission, this does not negate the viability of the agricultural enterprise.
16. **The Council's agricultural consultant advised** that a dwelling could be justified during the course of the application. **The Council's reliance on the availability** of alternative options in respect of living accommodation was not supported by its own consultant in respect of dwellings in nearby villages or the evidence in respect of the dwelling at Borrowash.

17. While the Council is not bound by the advice of its consultees, establishing agricultural need is an area of expertise and any departure from expert advice should be robustly justified. Whilst there are some complexities arising from the operation of the business, this does not introduce such a degree of uncertainty as to **justify the Council's stance**. In submitting its case, the Council has presented no substantive evidence to override that provided by the applicant or the advice of its own agricultural consultant.
18. I am therefore of the opinion that the refusal of planning permission was ill-founded, and that the decision was based on vague and inaccurate assertions unsupported by an objective analysis of the evidence on agricultural need and viability **available prior to the planning application's determination**. I therefore consider that the refusal of planning permission amounted to unreasonable behaviour with regards to the Guidance.
19. I conclude that it was unreasonable of the Council to have refused planning permission on the issue of essential agricultural need, with the result that the applicant has directly incurred unnecessary and wasted expense in submitting their appeal. Having regard to the provisions of the Guidance, a full award of costs is therefore justified.

Costs Order

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Erewash Borough Council shall pay to Mr H Fitzhugh, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Erewash Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross

INSPECTOR