



Appeal Decision

Hearing (Virtual) held on 22 September 2022

Site visit made on 23 September 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/X1118/W/21/3285593

Huntacott Stud, Edgiford Cross, Chumleigh EX18 7EB

- 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 & Mrs Peter & Emma Ford against the decision of North Devon District Council.
 - The application Ref 73242, dated 31 March 2021, was refused by notice dated 29 September 2021.
 - The development proposed is application for a permanent rural workers dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Before the Hearing further information was submitted relating to planning conditions, TB testing data, as well as additional comments introduced by the appellant on the Council's evidence. The main parties had sight of this information before the Hearing and had the opportunity to provide observations on it at the event. Therefore, despite the timing of those submissions no party has been prejudiced.

Background and Main Issue

3. The appeal site comprises a small number of caravans, agricultural buildings and access tracks at Huntacott Stud, a mixed-livestock agricultural holding around 3km east of Chumleigh.
4. The application for a rural workers dwelling involving the removal of the caravans and construction of a new residential unit was refused by the Council on several grounds. Among these was the lack of evidence to satisfy the essential and functional needs test for a rural workers dwelling.
5. Given what the Council thought were shortcomings in the evidence on the holding's functional need, it chose not, in its officer's report, to explore matters concerning financial viability. Yet, in their statement of case they have introduced new concerns relating to the appellant's failure to demonstrate that the farming business at Huntacott Stud is economically viable.
6. The appellants, indicate that it was unreasonable to introduce this argument given that the officer's report stated that the farm made a profit for the last 3 years. However, in that respect the Council merely appear to state what evidence was presented and clearly indicate they did not assess the enterprise's financial viability, in light of their concerns on functional need.

Nonetheless, the appellants' have had an opportunity to comment on the Council's case. Accordingly, the Council's concerns relating to economic viability will form part of my assessment.

7. The main issue is whether there is sufficient justification for a permanent rural workers dwelling at the site, having regard to policies which seek to restrict rural development.

Reasons

Planning Policy

8. Policy DM28 of the North Devon and Torrington Local Plan 2011-2031 (adopted October 2018) (the Local Plan) sets out instances where rural worker accommodation in the countryside will be supported. These include, amongst other things, where it can be demonstrated that there is an essential operational need for a full-time worker to be resident at or near their place of work. In addition, the size and nature of the development is such that it can be sustained by the scale of the operation. Support for a new dwelling will also be given where the farm enterprise is well established, of a sufficient size to support a full-time worker, economically viable and has clear prospects of remaining so.
9. The Rural Worker's Dwellings Supplementary Planning Document (adopted January 2020) (the SPD) provides more detailed guidance on the requirements of Policy DM28. For instance, the financial test consideration should be supported by up-to-date accounts, verified by an appropriate person. This information would then inform decision makers of the future profitability of the enterprise and whether or not a basic wage and funding of the proposed dwelling could be met.
10. The National Planning Policy Framework (the Framework) is less prescriptive stating that the development of isolated homes in the countryside should be avoided unless, amongst other things, 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 (Paragraph 80 (a)).
11. The broader policy exceptions outlined in the Framework do not specifically refer to a need for proposals to pass some form of financial test, as per Policy DM28. Yet they both refer to the requirement of an essential need arising in that location. In my view demonstrating whether there is an essential need relies upon an objective justification with reference to the nature, intensity and viability of a rural enterprise. That broadly aligns with the logic of the functional and financial tests set out in the Local Plan, which are reflected in the cases the main parties have made at appeal. Moreover, the appellants' case refers to the importance of establishing economic sustainability, which is an overarching policy objective in the Framework. Therefore, no one element of either the Local Plan or the Framework automatically outweighs the other.
12. Although the appellants' case is presented in how it accords with Policy DM28, they have nevertheless questioned that policy's relevance when assessing new housing, as the Council is currently unable to demonstrate a five-year housing land supply, thus rendering the development plan out of date. I will refer back to this matter later.

Essential need

13. The proposed dwelling, a single storey 2-bedroom unit will replace an existing mobile home. It would be positioned close to the farmyard and associated buildings.
14. The existing mobile home at the site has been used for residential purposes, albeit unlawfully, for some time. Attempts have been made to regularise the use, however, applications for planning permission were refused by the Council in 2014¹ and 2016².
15. Huntacott Stud is primarily involved in the rearing of cows and horses. These generate the majority of the farm's income through sales, although a small number of sheep, pigs and poultry are retained for breeding, sale and consumption by the appellants.
16. The holding is split between land owned by the appellant and rented land primarily used for grazing further afield. The appellant indicates that the owned land amounts to approximately 120 acres. However, at the Hearing it was confirmed by the main parties that a drawing in the Council's statement of case, showing around 85 acres, is a more accurate figure of land in the appellants' ownership.
17. In terms of the rented land the appellant's statement indicates this to be about 100 acres. However, on closer inspection of the submitted land agreements, accompanying the appeal, the total acreage comes to around 155 acres. Given that this is evidently outlined in the appeal documents I consider this to be a more accurate reflection of the extent of owned land.
18. The rented land is split over three neighbouring holdings and primarily used for grazing. Each parcel has a short tenure which the applicants renew every 6 months at a total cost of around £17,000. The land is important to the enterprise to ensure that cattle is fed and has access to good quality pasture.
19. However, given the very short-term nature of the rented land agreements and despite the apparent goodwill between the appellants and landowner, they are predicated on somewhat precarious terms. Despite the longstanding relationship between the appellant and the landowner, there is nothing in the agreements preventing the landowner acquiring new tenants following each 6-month term and displacing the appellants' stock from the land. If that were the case, the appellant's animals would lose a substantial amount of grazing land, placing the enterprise in jeopardy if alternative fields cannot be sourced.
20. I note the appellant's intention to grow the enterprise with the aim of carrying around 100 breeding cows. Yet, the ability to invest to help the business grow and sustain a larger herd would be curtailed by the uncertainty of not having long-term access to the important grazing land. Consequently, the term of the lease provides insufficient security to ensure that the viability of the farm business endures.
21. Financial accounts for the period 2018-2020 have been provided to show that the enterprise has produced a profit over a three-year period. The average annual net profit over the period was around £11,647. For 2020 the yearly profit

¹ Local Planning Authority Decision Ref – 58391, refused on 24th December 2014.

² Local Planning Authority Decision Ref – 59877, refused on 16 March 2016.

was approximately £15,579, and although this was due to increased livestock sales on account of the growing herd, a sizeable proportion of income was also generated from farm contracting and fencing, which in all likelihood is not linked to the holding's essential need activities. Based on the presented accounts, the income which could be drawn from the annual profits is low and fell well short of the National Minimum Wage, of approximately £18,069 per year.

22. It is feasible that the modest income generated could be acceptable given that the appellants are able to generate much of their own energy from solar panels at the site while having their own water supply. However, a noteworthy omission from the submitted accounts is the annual cost of around £17,000 relating to the rented land. Mr Peter Ford indicated that the income from the sale of livestock had gone to pay for the rented land. If that was the case, the rented land costs would likely absorb the net profits indicated and place serious doubt on whether a basic income could be drawn.
23. Furthermore, there is no information to show how the construction of the proposed dwelling would be costed or whether it would be funded through loans requiring repayment. Having regard to this and the uncertainty associated with the rented land used for grazing I have some doubt whether the proposed dwelling could be sustained by the scale of the farming operation.
24. Acknowledging the somewhat unsubstantiated nature of the financial evidence and the uncertainty associated with the rented land, it was suggested, by the appellants', that a temporary rural workers dwelling could be considered if it was deemed that insufficient financial information was presented. The appellant could then establish profitability during the temporary period.
25. Such a provision exists in Policy DM28. The accompanying explanatory text indicates that temporary accommodation could be allowed for an initial period of around 3 years for the business to become established financially. The operational need for the temporary dwelling will have to be demonstrated on the same basis as the provision of a permanent dwelling. Additionally, evidence will be required to demonstrate that the enterprise has been planned on a sound financial basis with a costed business plan provided.
26. In terms of financial projections, the appellant estimates that income generated from the sale of cows would increase from 10,000 to £20,000 in 2023. However, there are no forecasts for the following years, nor do I have any details of anticipated income from the sale of other animals reared at the holding. Without a detailed picture of the income that could be generated during the temporary period, there is no certainty the business would grow to become financially viable. Moreover, the lack of any detailed profit forecasts across the many income generating facets of the enterprise, places significant doubt in my mind regarding re-payments on the rented land as well as the ability to generate a profit over the duration of a 3-year temporary period advised by the policy. Therefore, the evidence presented does not give me the confidence to issue a temporary consent.
27. Having considered the submitted accounts, the lack of any comprehensive income projections and the insecurity associated with the grazing land, I cannot conclude with certainty that the rural enterprise is economically viable with a clear prospect of remaining so. Against this uncertain financial backdrop, the farm's economic circumstances would be unable to support or justify the provision of a new permanent dwelling at the site.

28. At the Hearing, I was presented with a detailed account of the farming practices taking place at the holding. Calving and foaling is largely undertaken in the fields and woodland surrounding the farmyard, rather than within the buildings. This is unusual according to the Council, but not uncommon. It was confirmed that the animals are hardy breeds that endure birthing outdoors from Spring through to Autumn. It was evident at the Hearing that Mr and Mrs Ford have considerable experience in breeding cows and horses. Their animal husbandry knowledge enables them to anticipate changes in behaviour or movement around the time of birthing. This requires very close attention and a need to be near to the fields and woodland where the animals would birth their young, at all times of the day/night.
29. The newly born foals and calves would initially be reared by the appellants in the farm buildings and I noted several young calves during my site inspection. Hand feeding the animals would take place several times during the day and a farm worker would need to be on hand to undertake those duties. Furthermore, during the initial rearing of the animals, the appellants would need to be within sight and sound to respond to any changes in behaviour and identify signs of illness often associated with newborn calves and foals.
30. The 'Essential Need Analysis' accompanying the appeal indicates that essential activities associated with the cattle and horses amount to approximately 80 days. Further man days would be added by essential tasks associated with rearing of sheep, poultry and pigs on site, as well as security checks. At the Hearing, I was told that pig and sheep production would be curtailed somewhat and play a secondary role to the breeding/rearing of cattle and horses. Accordingly, it is not clear whether the essential need tasks at the holding would meet the 275-man days widely recognised as the benchmark for one annual labour unit.
31. Even if there is a shortfall in man days, the unpredictability and intensity associated with the breeding/rearing of the cows and horses along with the expectation of a growing herd of cattle would not diminish, in my view, the requirement to have an on-site presence at the site most of the time.
32. I note the high value of the animals adds to the balance of factors that warrant a permanent on-site presence. The security of the animals through mobile surveillance was discussed at the Hearing. Yet given the close attention required to spot changes in behaviour, CCTV cameras, in my view, may not prove to be an effective means of checking on the health of the herd remotely.
33. A search of available market dwellings in the vicinity of the site was not undertaken. Given the appeal site's isolated location the most likely source of available housing would be in the settlement of Chumleigh, located some 3km away. Traveling to the holding from Chumleigh would present some delay in response to urgent or unexpected situations. I also recognise that the unpredictable and intensive husbandry associated with cows and horses around the time of birthing and early rearing. Therefore, the type of farming undertaken at Huntacott Stud is likely to require a continuous presence on site or close by to react and respond to emergencies. It is therefore not apparent that the functional need identified could be fulfilled by another existing dwelling within the local area.

34. On the basis of the above supporting factors, I find that the claim that a permanent site presence is required for much of the time, justifies a permanent rural workers dwelling at the site.
35. The Council considers that the hardier breeds at the holding would require less management and human intervention. However, there would still need to be a monitoring presence, particularly around birthing and rearing. Moreover, these would be high value animals and it would be expected of the appellants to be present during those times to ensure that their stock has the best chance of survival and future sale.
36. The Council's expert visited the holding prior to the Hearing and was informed of the times of the year when birthing would take place. At the Hearing Mr Ford indicated that calving would be extended, beyond the seasons he indicated to the Council. Despite this apparent change of position, I recognised that the operational requirements of the farm can change over time. Moreover, based on the evidence from Mr Ford, the hardier breeds of cattle would be able to adapt well to calving outside of the traditional spring/summer months. Therefore, I find the changes proposed by the appellant as plausible, and these would add further weight to a rural worker being present at the site most of the time.
37. In conclusion, based on the type and nature of activities being undertaken, there is a functional need for a full-time worker to be residing at Huntacott Studd. However, in light of my concerns relating to the holding's economic viability and its capacity to endure financially, there is insufficient justification for a permanent rural worker dwelling at the site, having regard to policies which seek to restrict rural development. It would fail to accord with Policies ST01 and DM28 where they require, schemes to accord with the principles of sustainable development, to be economically viable with clear prospects of remaining so, and that the development is sustained by the scale of the farming enterprise. The proposal also fails to meet the advice in the SPD, regarding financial test considerations.

Other Matters

38. The appellants' have concerns regarding the way the Council dealt with the application insofar as placing unfair doubt upon the method of farming, overly relying on historical evidence, and failing to request additional information from the applicant.
39. I note the appellant's frustrations given the length of time the case took to determine. However, the Council were clear in previous cases on the type of information required to prove an essential need, whilst the information considered during earlier applications would be essential to understanding the proposal's background and therefore a material consideration in determining the scheme. In any case, matters relating to the way the Council handled the application fall outside my assessment of this appeal.

Planning Balance

40. The appellant indicates that the Council is currently unable to demonstrate a 5-year housing land supply. The Council does not dispute this, therefore the presumption in favour of sustainable development set out in Paragraph 11 d) of the Framework is engaged. The Council however has questioned the appellant's

argument that Policy DM28 is relevant to the delivery of housing given that it relates to a type of exception that would not generally be considered in the terms of meeting a locality's housing supply. Nevertheless, the Framework does not specifically state that only strategic housing policies fall under the terms of Paragraph 11.

41. I have found that the enterprise's economic viability and its capacity to endure financially, does not justify a permanent rural worker's dwelling at this countryside location. The proposal would not align favourably with the Framework's overarching social and economic objectives in producing strong, healthy and vibrant communities that support growth and improved productivity.
42. I acknowledged that the proposal would have certain benefits, particularly by allowing the appellants to reside close to their place of work, thus negating the need to commute to and from the holding. It would also allow the enterprise to operate in a more convenient manner permanently. However, these matters only attract minor weight as scheme benefits, as the appellants would inevitably be reliant on less sustainable journeys by car to access nearby services and facilities. There are no known bus routes close to the site, whilst the walk on foot to the nearest town would be unappealing given the time it would take, as well as being on unlit roads with no footways. The benefits of one additional home to the local housing stock would inevitably be modest, particularly relative to the Council's overall housing requirements. There would also be some modest benefits associated with the site's access to energy from existing solar panels as well as its own private water supply.
43. The totality of the scheme's benefits is modest and would not overcome the significant harm I have found in the enterprise's inability to demonstrate existing and long-term economic viability and therefore justify a permanent rural enterprise dwelling.
44. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the scheme's benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations, including the Framework.

Conclusion

45. For the reasons given above I conclude that the appeal should be dismissed.

RE Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr and Mrs Peter and Emma Ford Appellants

Mr John Gower Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Rowan: Council's Planning Consultant

Mr Gareth Rowe: Council's Agricultural Consultant