



Appeal Decision

Hearing Held on 25 August 2020

Site visit made on 25 August 2020

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

an Inspector appointed by the Secretary of State

Decision date: 18 November 2020

Appeal Ref: APP/P2935/W/19/3242209

Land South of Woodside Cottage, Bardon Mill, Northumberland.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Stuart Furlong of MW Furlong & Co against Northumberland County Council.
 - The application Ref 19/01055/FUL, is dated 27 March 2019.
 - The development proposed is erection of rural worker's dwelling.
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Decision

1. The appeal is dismissed and planning permission for erection of rural worker's dwelling on Land South of Woodside Cottage, Bardon Mill, Northumberland is refused.

Application for costs

2. An application for costs has been made by Mr Stuart Furlong of MW Furlong & Co against Northumberland County Council. This application is the subject of a separate Decision.

Main Issues

3. The appeal was submitted following the Council's failure to give notice of its decision within the prescribed period. In its Statement, the Council has indicated the reasons for refusal had it resolved to determine the application.
4. On the basis of the indicative reasons for refusal in the Council's Statement, the main issues in this appeal are:
 - Whether there is suitable accommodation in the area which would meet the needs of the farming enterprise;
 - Whether the agricultural tenancy of the farming enterprise and associated land supports the provision of a dwelling; and
 - Risk to human health from mining activity.

Reasons

Accommodation

5. The appeal site is a greenfield site located in the open countryside. It is proposed to construct a dwelling for a rural worker associated with the nearby farming enterprise at Ridley Farm. It is common ground between the parties that there is a need for 2 full time workers to reside at or near the farm.
6. The site is located remotely from defined settlements and services, and it is common ground between the parties that Paragraph 79 of the National Planning Policy Framework (the Framework) is relevant to this appeal. Paragraph 79 seeks to avoid the development of isolated homes in the countryside, except in a number of circumstances including where there is an essential need for a rural worker to live permanently at or near their place of work. Policy GD1 of the Council's Core Strategy 2007 (the Core Strategy) also sets out that this area is considered to be open countryside, which includes sporadic groups of buildings such as the small number of residential properties and farm buildings in the vicinity of the appeal site.
7. The residential properties include Ridley Farm house which is occupied by the appellant and which is included within the tenancy of the farm. A Report¹ commissioned by the Council accepts that this existing farm house is only suitable to house 1 of the full time workers.
8. The appellant's son is taking an increasing role in managing the business and it is anticipated that he will eventually take majority control. He represents one of the full time employees and currently lives in a mobile home located on the farm. This mobile home would not represent suitable long-term accommodation.
9. The group of farm buildings also includes Ridley Farm Cottage which is occupied by a gamekeeper who is employed by a separate business run by the appellant. The gamekeeper is required to occupy this dwelling as part of his employment and the Council's Report accepts that this dwelling is not available to the second worker required by the farm business.
10. A third dwelling is Keepers Cottage, which is owned by the appellant and his daughter. This is currently let out to a private tenant who is not one of the workers employed on the farm. The rent generated by this property is not paid into the farm accounts. The Council's Report raises the matter of whether Keepers Cottage is suitable and could be made available for the second farm worker.
11. In respect of suitability, Keepers Cottage is located some distance from the main farm buildings and it may be that a dwelling located closer to the buildings would be preferable. However, this distance is not excessive and does not render Keepers Cottage as being unsuitable for the operational needs of the business or the accommodation of a farm worker. The proposed dwelling would also be located on a separate site from the farm buildings, and whilst it would be closer than Keepers Cottage I do not consider that this would be of a degree which would mean that the appeal proposal is significantly more suitable in operational terms.

¹ Report on a Proposed Permanent Rural Worker's Dwelling, AG & P Jackson, May 2019.

12. The current rent for Keepers Cottage is approximately £1,000 per month, which reflects its status as a 'lifestyle' property including an extent of land and stables. If this was occupied by a farm worker then the appellants submit that this rent would be charged to the farm business which would be economically unsustainable. However, the Council's Report estimates that the cost of building a new dwelling would be approximately £200,000 to £300,000, and supports this with reference to appropriate industry standard figures. The Council submits that there would not be a significant difference between the rent for Keepers Cottage and the annualised cost of constructing the dwelling. In response, the appellant refers to potential savings from construction work, equipment and materials which he could undertake and contribute to from his own resources. However, reference was only made to this in general terms and it was confirmed at the Hearing that this had not been fully costed.
13. There is also potential for the stables and land to be rented separately from Keepers Cottage, although the income arising from this would be limited. It may also be appropriate for the rent charged to the business for a dwelling occupied by a rural worker would be lower than a lifestyle property, although this would reduce the income arising from the appellant's investment in Keepers Cottage. There was some discussion at the Hearing as to whether a reduction in income from the cottage would mean that the appellant would sell it. However, there is no substantive evidence that the use of Keepers Cottage for a rural worker is as economically unsustainable as the appellant suggests.
14. I acknowledge that both the Council's and the appellant's figures are relatively high level estimates. However, the Council's conclusions on this issue are more robust as they are based on a wider consideration of site specific circumstances and refer to industry standard figures, compared to the more general assumptions of the appellant. On balance, it has not been demonstrated that Keepers Cottage is economically unviable for use as a rural worker's dwelling.
15. Reference has been made to the potential for the appellant to move into Keepers Cottage on his retirement. However, this would not appear to be imminent and I am mindful that even on retirement a degree of supervision of the farming operations could be provided by the appellant. There is also potential for Keepers Cottage to be occupied by the appellant's daughter, but she has accommodation elsewhere and there is no evidence that there is an overriding need for her accommodation in this location. I acknowledge the wish of the appellant to provide accommodation for his family in the future, but based on the evidence before me this does not mean that Keepers Cottage is unavailable for a rural worker associated with the appellant's business. Similarly, the potential intentions of the appellant's family members do not mean that Keepers Cottage is unavailable.
16. The appellant has referred to a number of appeal decisions in support of the proposal, although these decisions are of some age and pre-date the Framework. In any event, these decisions do not represent a direct parallel to the appeal before me as they relate to the occupancy of a dwelling by people previously involved with the operation of the farming enterprise, which is not the case in respect of Keepers Cottage.
17. I conclude that it has not been demonstrated that there is no suitable accommodation in the area which would meet the needs of the farming enterprise and which is available to a rural worker. The proposal would

therefore conflict with policy H18 of the Tynedale District Local Plan 2000 (the Local Plan) which sets out that dwellings may be permitted in the countryside for a rural worker subject to the requirement that such housing could not be met from existing accommodation. The proposal would also be contrary to policies GD1, H1, H3 and H4 of the Core Strategy with regards to the location of housing development.

18. The proposal would also be contrary to paragraph 79 of the Framework which seeks to avoid isolated homes in the countryside, and in particular paragraph 79(a) as it has not been demonstrated that existing accommodation could not meet the need for a rural worker to live near their place of work.
19. The Council also refers to policy HOU 8 of the emerging Northumberland Local Plan² which states that proposals for new rural workers' dwellings in the open countryside will only be supported where the functional need could not be fulfilled by any existing dwelling, amongst other criteria. Whilst the proposal would conflict with this policy, due to the stage of the preparation of this emerging Local Plan I give this conflict limited weight and this is not a determinative matter in this appeal.

Agricultural Tenancy

20. The Council states that there is no longer any succession with a farm tenancy, and if the appellant's son does not subsequently get the farming tenancy then the proposal would result in the construction of a dwelling with no land to support it. This reflects comments in the Council's Report which indicates that it is feasible that if such a grant of tenancy does not happen then the proposed dwelling will not then have the land that justified it.
21. However, the appellant provided robust evidence at the Hearing that there are formal processes which give a degree of certainty in respect of succession, including through the Land Tribunal. I am also mindful that the appellant's family is long established in the area and is well respected. Furthermore, as was stated at the Hearing, there is nothing to suggest that the landlord would not agree to the tenancy passing to the appellant's son.
22. On the basis of the evidence before me, the Council's concerns on this matter are without foundation and it has not provided substantive evidence to demonstrate otherwise. This does not therefore weigh against the proposal.
23. Therefore, with regards to the agricultural tenancy, the farming enterprise and land would support the provision of a dwelling. In respect of this main issue, the proposal would not conflict with policies GD1, H1, H3 and H4 of the Core Strategy; policy H18 of the Local Plan; and the Framework with regards to the development of a dwelling in the countryside.

Mining Activity

24. The Council's first indicated reason for refusal refers to insufficient assessment as to the risk to human health from mining activity on the site. This is based on comments provided by the Council's Public Protection team, although these comments were not provided to the appellant during the course of the planning application.

² Northumberland Local Plan - Publication Draft Plan (Regulation 19) and proposed minor modifications, submitted on 29 May 2019

25. In response to information provided as part of the appeal process, the appellant has commissioned a Risk Assessment³ which recommends protection measures with regards to radon gas.
26. The Assessment also confirms that the site is within a Coal Mining reporting area and that potential risks arising from hazardous ground gases have been considered, including methane and carbon dioxide. In this regard, it concludes that the site is at a low risk as it is not recorded to be underlain by recorded or probable unrecorded workings and no seams outcrop in the vicinity of the site. On that basis, no further protection measures are proposed.
27. The Council refers to examples of development elsewhere which raised issues in respect of land contamination and mine gas. However, it has not been demonstrated that the level of risk associated with these other developments is a parallel to the appeal proposal. Whilst I acknowledge that Northumberland has a long history of mining activity, I consider that the appellant's Risk Assessment is proportionate and robust, particularly with regards to the assessment of the site as being low risk from hazardous ground gases such as methane and carbon dioxide.
28. Nevertheless, as this is a matter of public safety a precautionary approach may be justified. The Council has stated that it would expect the appellant to provide an architectural drawing detail to demonstrate how gas protection measures can feasibly be installed into the proposed dwelling. However, the proposed dwelling would be a new-build property which would include protection measures regarding radon gas. There is no substantive evidence that other gas protection measures could not be incorporated as part of the development, and on that basis I consider that this could be readily addressed by a pre-commencement condition. Indeed, this is reflected in the Council's advice⁴ on the assessment of mine gas which states that for those developments in low risk areas, officers will recommend a condition requiring gas protection measures are incorporated into developments.
29. I conclude that the risk to human health arising from mining activity could be addressed by a suitable planning condition, and this matter is not therefore sufficient to lead to the refusal of planning permission. Subject to such a condition, the proposal would comply with policy CS23 of the Local Plan with regards to the assessment of the nature and extent of contamination and remedial measures.

Conclusion

30. Notwithstanding my conclusions with regards to agricultural tenancies and mining activity, it has not been demonstrated that there is no suitable accommodation in the area which would meet the needs of the farming enterprise. The proposal would therefore conflict with the development plan and the Framework when read as a whole with regards to rural housing.
31. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

³ Ground Gas Risk Assessment, Ergo Environmental Limited, January 2020.

⁴ Contaminated Land Planning Procedure (Full & Outline Applications only) Issued 22/10/18

Appearances

FOR THE APPELLANT:

Maria Ferguson	Maria Ferguson Planning Limited
Ben Johnson	Richard Brown & Partners
Stuart Furlong	Appellant

FOR THE COUNCIL:

Melanie Francis	Northumberland County Council
Alex Wall	Northumberland County Council

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

1. Suggested condition from the Council relating to landscaping and ground gas.
2. Comments from the Council's Environmental Protection Team, 4 February 2020.
3. Links to the Council's contaminated land advice.
4. Appellant's agreement to pre-commencement conditions.