



Appeal Decision

Hearing held on 5 October 2016

Site visit made on 5 October 2016

by **Richard Aston BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th November 2016

Appeal Ref: APP/V2255/W/16/3147179

Alpaca Farm, Yaughar Lane, Hartlip, Sittingbourne, Kent ME9 7XE

- 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 Mrs K Brown against the decision of Swale Borough Council.
 - The application Ref 14/505609/FUL, dated 11 November 2014, was refused by notice dated 2 October 2015.
 - The development proposed is erection of permanent agricultural dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A 'Financial Test Update' document was submitted by the appellant prior to the hearing to which the Council had responded to in writing. At the hearing the appellant also submitted the full end of year accounts for 2015/16 and both parties produced additional information and representations as set out at the end of this decision. The parties agreed that such evidence was integral to the main issue and an adjournment was taken to consider it. Consequently I find there would be no prejudice to any party from my consideration of these documents in determining the appeal and I have therefore taken them into account.

Main Issue

3. The main issue is whether the enterprise is financially sound and sustainable in the longer term, so as to justify the need for a rural worker to live permanently at the site.

Reasons

Background

4. The appeal before me follows the refusal of permission for a temporary dwelling and a subsequent appeal which was allowed on 20 March 2013 for a temporary period of three years.
 5. The appeal site is an existing Alpaca enterprise operating as Valley Alpacas Ltd. It is part of a wider holding comprising a series of paddocks with stock fencing, various small outbuildings, field shelters, stables and storage facilities. The appellant also keeps other animals and livestock, including chickens, pigs and
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Appeal Decision APP/V2255/W/16/3147179

horses. The appeal relates to the approved timber cabin style building shown on the plan which is currently resided in by the appellant Mrs Kirsty Brown, her husband, Andrew Brown and their son.

Policy context and agreed matters

6. Policy SH1 of the Swale Borough Local Plan 2008 ('LP') pre-dates the National Planning Policy Framework ('the Framework') and sets out a defined settlement hierarchy for development proposals which in this countryside location requires proposals to be considered in accordance with Policy E6. That policy sets out that development proposals in countryside locations will only be permitted in certain circumstances, including where it is demonstrated to be necessary for agriculture. Notwithstanding that it pre-dates the Framework, Policy SH1 is a general policy that relates to the protection of the countryside and both parties agreed that in this regard, the policies are consistent with the Framework. I have no evidence which would lead me to disagree with this view.
7. The Council's reason for refusal also refers to Policy DM12 of the Emerging Local Plan ('ELP'). However, the Council clarified at the hearing that following modifications to the plan, there was no firm timetable for its re-examination. Councillor Wright suggested this would be sometime in the New Year but as the plan is still in the examination process, I can therefore only give it very limited weight.
8. Both parties place significant weight on Planning Policy Statement 7 Annexe A. Although I agree with the parties that it provides a useful and objective basis for considering such proposals, the guidance has been cancelled and no longer has any weight as government policy.
9. The Framework states that new isolated homes in the countryside should be avoided, unless there are special circumstances to justify them such as '*the essential need for a rural worker to live permanently at or near their place of work in the countryside*'. It seems to me that although the test in the Framework is less onerous than in PPS7, the clear reference to '*live permanently*' implies a requirement for the decision maker to be satisfied that the need to do so will or is likely to continue well into the future, or at the very least is capable of doing so. An enterprise cannot do that without being financially viable and sound and have reasonable prospects of remaining so.
10. It is common ground that the appeal proposal would meet a need in terms of full time, on site attendance and that other dwellings are not available to meet this need. Therefore the need for a worker to be at the site for the functioning of the enterprise has been demonstrated and based on the information before me I have no reason to take a different view. The parties also agreed that if I were to find that the enterprise required a permanent presence there were no other countervailing local considerations such as effect on the Area of Outstanding Natural Beauty or any other considerations or objections that would outweigh this and that the proposal would be sustainable development.
11. The Council do not consider that the enterprise is currently financially sound and has a clear prospect of remaining so. They were supported in this by the Parish Council and the observations of the Council's ward member for Hartlip, Newchurch and Newington. The hearing proceeded on the basis that the performance of the enterprise since the temporary permission was granted on 20 March 2013 and its future prospects were a key consideration. Moreover,

Appeal Decision APP/V2255/W/16/3147179

that the business should demonstrate a minimum agricultural wage, a notional rental return on the original land purchase and a return on capital investment.

Reasons

Financial viability

12. At face value the evidence indicates a modest progression in turnover and net profit that is consistent with a growing business, although in 2014/15 this was significantly affected by low birth rates. The Council is concerned that the submitted financial information was not audited and is only an abbreviated version. The appellant explained that this is not a requirement for small businesses and it is normal for accounts to be presented in this manner. I agree that this is typical and in any event, full accounts were produced for the year ending 2015/16.
13. These show that a modest profit was made in 2015 of £6,413 and in 2016 of £6,523. However the Council claimed that depreciation is a proper deduction for assessing financial standing and that this is standard accounting practice. When the Director's salary of £8,000 was included the Council argued that this gave a net profit of £17,773 to provide a wage, a nominal land return and a return on capital.
14. The estimated build costs for the dwelling would not be significant. Moreover, given the nature of the enterprise, there would be no machinery requiring maintenance, and the only other maintenance required, to fencing, the outbuildings and the dwelling, would be carried out by hand by Mr Brown.
15. In this particular case, the depreciation is money that has already been spent on improvements to the property. It is not money that the enterprise needs to find on an annual basis and is not, in my view, a determining factor that demonstrates the future profitability of the enterprise. The fact that the appellant argued that because she pays tax on the Depreciation it should be taken into account is not relevant as tax is paid on profit before depreciation. On this basis, I am persuaded that overall a figure of £24,294 should be used for net profit in the 2015/16 financial year.
16. However, the Council also disputed that £7,358 shown in the accounts as being for 'Other operating income' should not be taken into account as it did not relate to the agricultural enterprise which formed the basis of the grant of temporary permission by the previous Inspector. Mr Brown explained that this figure resulted from a Rural Farm Payment of £658, an income from letting out of a paddock for grazing of a single horse for £5,200 and a sum of £1,500 for the rent of land for a wedding.
17. Cllr Wright also contended that this rental income for grazing was '*at the top end of the market*', having had personal experience of commercial livery enterprises. Whatever the case may be it is a rental income that has been received and forms part of the accounts.
18. The grazing of horses, as opposed to their keeping does not normally require planning permission. The appellant contested that the land in question also benefited from a lawful use relating to an application in 2010¹. However, the Council were able to produce the approved plan showing the land to which that

¹ SW/10/0032

Appeal Decision APP/V2255/W/16/3147179

application relates and it was clear that it did not relate to the grazing land in question, a matter which was also agreed by both parties at the site visit. Furthermore, there is no evidence that there exists an 'essential' need for the appellant to live at the site for the purposes of this grazing land and I am mindful that no formal agreement confirming such an arrangement has been submitted.

19. Turning to the rental sum for the weddings, the appellant stated that the weddings have an integral Alpaca theme and that in any event, the marquee would be permitted development under Part 4 of The Town and Country Planning (General permitted Development) (England) Order 2015 ('GPD'). Whilst I do not doubt that there may be some involvement given the nature of the enterprise, the appellant did not produce any substantive evidence to demonstrate that the Alpacas were the sole reason couples wish to be married at the site or that they were an integral part of such an occasion, as opposed to merely being part of the general setting of a wedding.
20. I have had regard to the appellant's view that diversification should be encouraged and to paragraph 28 of the Framework, which promotes the development and diversification of the rural economy. Nevertheless, it is an established principle that it is the needs of the enterprise which formed the basis for the grant of temporary consent that I must consider. I am not persuaded that the rental income from the grazing land and the use of the barn for weddings should be taken into account. Therefore, it is not necessary for me to consider whether such a use is permitted development or not. Consequently, removing these elements from the £24,294 gives a reduced figure of £17,594.
21. At the hearing in 2013, the appellant agreed that a figure of £18,000 was an appropriate wage although they explained to me that this was done for the purposes of engaging in that event and did not agree with it. The appellant now contends that the national minimum wage should be the benchmark.
22. In my judgement, the grade of worker required for such an enterprise should reflect the full time management of livestock and management responsibilities and on the evidence before me this is £352.95 a week or £18,353 pa as set out in the Agricultural Wages Board². I find this figure quoted by the Council to be a more realistic and reasonable one, as opposed to the national minimum wage and I note that it is consistent with the various appeal decisions set out in 5.41 of the Council's statement and the findings of the previous Inspector in 2013. Although the appellant contends that remuneration takes the form of benefits in kind from Pork meat, logs and clothing made from the Alpaca fibre, I have no substantive basis or justification before me for using such benefits to offset the wage requirement.
23. Both parties had also previously agreed in 2013 that £3,000 was an acceptable figure for such the notional rental return on the original land purchase, although the appellant and the Council gave revised figures at the hearing of £880 and £2,280 respectively. In terms of return on investment, the Council argued that a commercial rate of 3.5% should be applied rather than a return on savings figure of 2.5%, giving an overall figure of £5,600. Mr Willis verbally gave a figure at the hearing, of £1920 or 1.5%. In my view, 2.5% is a

² Paragraph 5.34-5.35 of Council's statement

Appeal Decision APP/V2255/W/16/3147179

reasonable return on savings giving a figure of £4,000, a figure which I also note is suggested elsewhere in the appellant's evidence³.

24. On this basis, using the lower figure for the notional rental return would result in a figure of £12,714 and with the Council's higher figures it would amount to £11,314. Either way, this is insufficient to pay what I consider to be a reasonable wage for a rural worker; given my findings in this regard and even if the national minimum wage of £13,334 was used, as suggested by the appellant.

Longer term

25. Turing to future prospects, the appellant contends that income levels will increase and that there is potential for further investment in the business. The submitted 'Sales Forecast' clearly shows that animal sales would be broadly consistent and rising slightly year on year at an average of just above £26,000 per year but with a noticeable reduction in 2021. There would be relatively minor increases in garment and feed sales and from shearing, Alpaca livery, service agreements and further Pork sales but excluding the latter and animal sales, the increase is relatively small at £650 a year until 2022. The land rental from weddings would increase year on year from £6,000 in 2017 to £36,000 in 2022 and the grazing rent would remain constant at £4,680.
26. Agricultural enterprises can exist on relatively low profit margins and the forecasts would appear to demonstrate a relatively similar pattern in future years that is comparable in the 2015/2016 accounts. However, the future viability of the business appears to heavily draw from the land rental for weddings which provides an increasingly significant year on year amount of income, in addition to the rent from grazing and I have already concluded that these should not be taken into account in assessing financial viability.
27. Even with such limited increases in turnover, this is subject to inherent fluctuation in sales prices and birth rates as per 2015 and whilst I do not doubt the sale prices could be achieved, I am mindful that such turnover is also not yet realised. Furthermore, I note that the projections are not significantly different to the actual turnover in this respect as set out in the 2015/16 accounts⁴. Even when taking into account the projected increases I am not persuaded that the additional income that is anticipated would be likely to reduce the shortfall enough, in order to pay the necessary wage, the notional return on land rental and return on investment.

Conclusion

28. I note the enthusiasm, knowledge and experience demonstrated by the appellants and I have no doubt that they have a long term commitment towards the running of the enterprise. Nevertheless, I must make a judgement solely on the basis of the evidence put before me by the parties and in this particular case, the evidence does not indicate to me that the enterprise is yet to demonstrate it is planned on a sound financial basis and that it is sustainable in the longer term so as to justify a permanent dwelling. Consequently, I find that the special circumstances to justify an isolated new home in the countryside do not exist and the proposal would therefore conflict with Policies SH1 and E6 of the LP and paragraph 55 of the Framework.

³ Part B – Accounts Summary, April 2016.

⁴ £29,440 – page 10 of 2015/16 Unaudited Financial Statement for year ended 5 April 2016.

Appeal Decision APP/V2255/W/16/3147179

29. At the hearing the appellant requested that because the appellant needed to be on site as there was a clear functional need, that I should consider the grant of a further temporary permission. There was no suggestion from the Council that Mrs Brown and her family would need to cease occupation of the dwelling immediately or that action would be taken to secure this and I am also mindful that the Planning Practice Guidance states that it will rarely be justifiable to grant a second temporary permission. Furthermore, the Council were of the view that any justification for grant of a further temporary period, in order to give the enterprise more time to demonstrate its viability, should fall to be assessed by them as part of any future application that may be made on that basis.
30. I share this view and I must determine the appeal on the basis of the development applied for and it should be solely for the Council to decide on the merits of any such application that may be submitted following the dismissal of this particular appeal. The grant of a further temporary permission is therefore not necessary in this particular case and would conflict with paragraph 206 of the Framework.
31. I also recognise that if the appeal is dismissed, it could, at some point in the future potentially result in an interference with Mrs Brown's home and family life. However, this must be balanced against the public interest and I do not consider that any possible effect on the appellant would outweigh the harm caused by permitting an isolated home in the countryside.
32. For the reasons set out above and having considered all other matters raised, the proposal would conflict with the development plan, when taken as a whole and the Framework and therefore I conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

Appeal Decision APP/V2255/W/16/3147179

APPEARANCES

FOR THE APPELLANT:

Mr Mark Willis BTP MRTPI MBIAC	Willis & Company Ltd
Mrs Kirsty Brown	Appellant
Mr Andrew Brown	Appellant's Spouse

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Gregory BSc MSc	Swale Borough Council
Mr Richard Lloyd-Hughes BSc Est Man MRICS	Rural Planning Ltd
Cllr John Wright	Swale Borough Council ward member for Hartlip, Newchurch and Newington and Hartlip Parish Councillor

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1. Valley Alpacas Ltd report of the Director and unaudited financial statements for the year ended 5 April 2016.
2. Email representation from Elizabeth Kinney dated 3 October 2016.
3. Email from Michael Studham on behalf of appellant entitled 'Accounts and Planning' dated 3 October 2016.
4. Photocopied extract from 2013 appellant's statement of case relating to wages.
5. Sales invoices from Valley Alpacas Ltd for Alpaca sales dated 29 August, 3 and 21 September 2016.
6. Email representation from Hartlip Parish Council dated 24 September 2015.
7. Approved location plan showing red line boundary of application pursuant to SW/10/0032.