Appeal Decision

Hearing held on 12 August 2014
Site visit made on 12 August 2014

by M C J Nunn BA BPL LLB LLM BCL MRTPi
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25th September 2014

Appeal Ref: APP/F0114/A/14/2220728
Kingwell Farm, Hayeswood Road, Timsbury, Bath, BA2 0HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs I W & J M Appleyard against the decision of Bath & North East Somerset Council.
- The application Ref: 13/04635/OUT, dated 25 October 2013, was refused by notice dated 20 December 2013.
- The development proposed is described as ‘outline planning application for the erection of an agricultural worker’s dwelling’.

Decision

1. The appeal is allowed and outline planning permission granted for the erection of an agricultural worker’s dwelling at Kingwell Farm, Hayeswood Road, Timsbury, Bath, BA2 0HH, in accordance with the terms of the application Ref: 13/04635/OUT, dated 25 October 2013, and the plans submitted with it, subject to the conditions at Annex A.

Procedural Matters

2. At the hearing, I invited comments from the parties regarding the recent High Court judgment in Redhill Aerodrome Ltd and SSCLG, Tandridge District Council and Reigate & Banstead Borough Council [2014] EWHC 2476 (Admin). That case deals with interpretation of Green Belt policy. I have taken into account the comments received, and have considered this appeal in the light of the Redhill judgment.

3. The Council has confirmed that Policy GB.1 of the Bath & North East Somerset Local Plan 2007 (‘the Local Plan’), cited in the first reason for refusal has been replaced with Policy CP8 of the Bath and North East Somerset Composite Core Strategy (‘the Core Strategy’), adopted in July 2014.

4. The Council’s second reason for refusal refers to Policy 1 of the Bath & North East Somerset, Bristol, North Somerset, and South Gloucestershire Joint Replacement Structure Plan. However, this no longer forms part of the development plan. I have assessed the appeal accordingly.
Main Issues

5. I consider the main issues in this case to be:

   i. whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (‘the Framework’) and development plan policy;

   ii. the effect of the proposal on the openness of the Green Belt and the character and appearance of the area;

   iii. if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, including the agricultural need for the dwelling, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Background

6. Kingwell Farm, south of Hayeswood Road, is located in attractive undulating countryside which is designated as Green Belt. The farm comprises a main farmyard complex consisting of various farm buildings. Separated from, but close to the complex of farm buildings, is a modern detached farmhouse. Granted permission in 1994, this dwelling is subject to an agricultural occupancy condition.

7. Kingwell Farm is a mixed beef, sheep and arable enterprise now run as a partnership between Ian Appleyard, and his son Jason Appleyard. Until recently, the enterprise was run by Ian Appleyard on a sole trader basis. Jason’s wife Michelle also works part-time in the business. The farm comprises a total of 188 acres, of which 61 acres is at Kingwell Farm itself, plus a further 127 acres about 1 mile away at Clutton Hill. A further 193 acres are tenant farmed and 170 acres are under contract farming arrangements.

8. The appellant is seeking outline planning permission for a second permanent farmhouse, with all matters reserved for subsequent determination. This dwelling would be located near the main farm entrance, close to the northern boundary with Hayeswood Road.

Relevant Planning Policy Context

9. Part 9 of the Framework deals with Green Belts. It states that the Government attaches great importance to the Green Belt, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It states that, when considering any planning application, substantial weight should be given to any harm to the Green Belt.

10. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. This general approach to Green Belts is reflected in Policy CP8 of the Council’s Core Strategy.
11. The Framework at Paragraph 55 states that local planning authorities should avoid isolated new homes in the countryside, unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. In addition, Paragraph 28 of the Framework says that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. It supports the sustainable growth and expansion of all types of business and enterprise. It also promotes the development and diversification of agricultural and other land based rural businesses.

12. Policy HG.10 of the Local Plan specifically deals with new agricultural dwellings in the countryside. It says new dwellings will not be granted unless they are essential for agricultural or forestry workers. Various criteria are set out including: there is a clearly established existing functional need and financial justification for a worker to live on the holding; the need is for accommodation for a full-time worker; the functional need could not be fulfilled by another existing dwelling in the holding, or other existing accommodation in the area which is suitable or available for occupation, or through re-use of an existing building on the holding; it is sited within a hamlet or existing group of dwellings or buildings, or elsewhere in the countryside only where this is not feasible; it is restricted in size commensurate with the functional requirements of the enterprise; and occupancy is restricted to agricultural workers.

13. The appellants dispute the consistency of Policy HG.10 with Paragraph 55 of the Framework on the basis that it largely relates to the requirements of Annex A of Planning Policy Statement 7: Sustainable Development in Rural Areas (‘PPS7’). The appellants argue that Paragraph 55 of the Framework takes a more simplified and straightforward approach, moving away from the detailed and stringent tests in PPS7. On this basis, it is argued that Policy HG.10 is overly prescriptive when viewed in the context of the Framework.

14. I acknowledge that the Framework contains no specific or detailed guidance on determining whether there is an essential need for a rural worker to live permanently at a site. However, the Framework provides a basis or ‘substructure’ within which Councils can produce their own distinctive plans and policies. There is nothing to prevent Councils from ‘fleshing out’ the terms of the Framework, although I accept that in this case Policy HG.10 predates the Framework.

15. In any event, in my view, although now cancelled, PPS7 Annex A sets out a useful, tried and tested methodology for assessing whether there is an essential need for an agricultural worker’s dwelling on a holding. I accept that PPS7 no longer has status as national planning policy. I also share the Inspector’s view in an appeal decision from 2013 that the terms of Paragraph 55 of the Framework cannot preclude demonstration of agricultural need by evidence that does not seek to, or cannot show, all the Annex A tests of PPS7 have been met. That said, I see no reason to discount the Annex as a potentially useful tool in seeking to establish whether a dwelling is justified. Indeed, such an approach has been taken in other appeal decisions.

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1 Ref APP/Y1138/A/12/2181808, 2181821 & 2181807
16. The Annex sets out a ‘functional test’ to establish whether accommodation is essential for the proper functioning of the enterprise. Essentially, this requires that the labour requirements of the holding or activity justify a full time worker, and it is necessary for the worker to be readily available at most times. The Annex also sets out a ‘financial test’, as accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. I shall deal with these tests later.

**Whether inappropriate development in the Green Belt**

17. Part 9 of the Framework states that the construction of new buildings is inappropriate in the Green Belt, subject to certain exceptions. This proposal is for a new dwelling and there is no dispute between the parties that the development constitutes inappropriate development within the Green Belt, which is, by definition, harmful. Therefore, it should not be approved except in very special circumstances.

**Effect of the development on the openness and character of the Green Belt**

18. The Council is concerned that the introduction of built form and associated residential paraphernalia would encroach on to the countryside and result in a loss of openness to the Green Belt. The plans show that the new dwelling would be set away from the main farm complex on an area of lower land close to the northern boundary of the site, adjacent to the road. This boundary comprises a belt of mature trees, including broadleaf and conifer varieties, which provide a thick screen. The lower level of the site, compared with the surrounding topography, and the thick vegetative boundary means the dwelling would be sited unobtrusively.

19. The appellants have indicated a willingness to accept various conditions in the event the appeal was allowed, including that the dwelling be restricted to a single storey and that its floor area should not exceed 150m². It was also accepted at the hearing that permitted development rights could be restricted. Such measures would limit the adverse effect on the openness of the Green Belt.

20. Furthermore, the Council’s Landscape Officer has commented that the proposed location would mean that the dwelling would be perceived as a ‘Gate Lodge Building’ in the landscape, and was preferable to that previously proposed in an earlier scheme. Subject to appropriate detailed siting and landscaping, the Council’s delegated report concludes that a dwelling in this location should not significantly affect the character or appearance of the surrounding area.

21. Overall, I accept that there would inevitably be some loss of openness because a new dwelling would encroach on to undeveloped land. The Framework notes that one of the essential characteristics of Green Belts is their openness. Nonetheless, because of the dwelling’s proposed unobtrusive siting, limited size and bulk, it would not have significant prominence, dominance or impact. Consequently, the loss of Green Belt openness would not be significant. Therefore, I find that any harm, in addition to harm by reason of inappropriateness, would be limited.
**Other Considerations – Agricultural Need**

22. The main focus of the appellants’ submissions in favour of the proposal is the agricultural need for the dwelling. I examine this, taking account of the functional and financial tests.

**Functional test**

23. As previously noted, the farm is mixed, combining arable activities and livestock. The arable operations are predominantly carried out by Ian Appleyard, with some assistance from Jason Appleyard, as well as two self-employed farm workers. Additional labour is used at harvest and peak times. The current livestock of the farm includes 120 breeding ewes and 22 store cattle.

24. Since working full-time on the farm, Jason Appleyard has expanded the beef enterprise with the introduction of a suckler herd. The suckler herd has now expanded to 30 and future expansion envisages a herd of around 60. The store cattle numbers are also proposed to rise by 40. A fodder store has recently been approved under the ‘prior approval’ procedure. It is proposed to submit a further ‘prior approval’ notification for a new suckler unit, but this has been delayed because of uncertainties regarding outcome of this appeal. The livestock element of the operation, it is argued, complements and balances the arable side of the business.

25. There is disagreement about the labour requirement for the farm. The Council accepts that there is sufficient labour to employ 2 full-time farm workers, whereas the appellants calculate the requirement to be 4.3 full-time workers. This, it is said, would increase to 4.89 full-time workers following the expansion of the suckler and store cattle herds. This does not take account of emergencies that may arise in respect of animal welfare or extreme weather conditions.

26. Whatever the exact labour requirement, I am in no doubt that the both the arable and livestock operations are intensive activities. Notwithstanding the discrepancies of the parties’ labour calculations, I am satisfied that the nature of the enterprise necessarily involves long working hours. I accept the appellants’ submissions that it is not feasible for Jason Appleyard to live off-site, especially following the introduction of the suckler herd. In addition to attending to the sucklers, it is necessary to perform a range of farming duties, including lambing and calving, monitoring the condition and welfare of the livestock, attending to emergencies and so on.

27. I acknowledge that there is a need for a stock keeper to be available at most times, both day and night to ensure essential supervision and proper care of the livestock. To allow the suckler herd and store cattle to expand and remain healthy, the animals require care and attention. They may become ill at short notice, necessitating care to deal with complications and prevent death of stock. Any losses can have significant financial consequences. For this reason, I accept that Jason Appleyard residing within sight and sound of the livestock is critical.

28. At present, neither the suckler herd nor the store cattle have had time to expand to their full extent. There is scope to significantly expand this element
of the business. If the planned expansion of the herds takes place (and I see no reason why this would not occur), it would reinforce the need for Jason Appleyard being readily available at most times, throughout the year. An additional dwelling would greatly assist in the expansion of the farm, and accord with the rural economic objectives of the Framework.

29. I appreciate that Ian Appleyard now suffers from arthritis and is increasingly unable to undertake some of the operations required for the day to day running of the farm, particularly those associated with the livestock. These tasks now fall upon Jason Appleyard, his natural successor. I also understand Ian Appleyard is often off-site machine driving on arable land or undertaking other non-agricultural business activities.

30. The Council mentioned that, given Ian Appleyard’s reduced involvement in the livestock element of the business, whether the current living arrangements could be reassessed, including the possibility of Ian Appleyard and his wife relocating from the farmhouse to enable its occupation by Jason Appleyard and his wife Michelle. However, at the hearing Ian Appleyard said this was his home, and that he had no wish to vacate it. Indeed he strongly argued it would be unreasonable for him to do so.

31. I am fully aware that a functional need for accommodation depends on the needs of the enterprise and not the personal preferences or circumstances of the individuals concerned. That said, I agree that it would be unreasonable to require Ian Appleyard and his wife to vacate the farmhouse, given that this has been their home for a number of years. Moreover, and crucially, although his direct involvement in dealing with the livestock has reduced in recent times, Ian Appleyard still continues to oversee and manage the operations at Kingwell Farm. In this respect, his on-site presence is still essential. As a result, his continued occupation of the farmhouse is vitally important and I accept there is a need for an additional agricultural dwelling on the site.

32. A further issue is whether any functional need could be fulfilled by other accommodation. Although the Council has suggested the extension or subdivision of the existing farmhouse, thereby obviating the need for a new dwelling, this would not provide a satisfactory independent residential unit for a farm worker. I accept that there are no other suitable agricultural buildings on the farm that could be converted without compromising its operations. The site is in a remote location, and although the Council has highlighted various properties for sale in the locality, none of these are within direct ‘sight or sound’ of the main farm complex. I do not consider, therefore, that any represent a realistic or suitable means of meeting the functional needs of this enterprise.

33. Overall, after careful consideration of the submissions of the parties, I conclude that there is a functional need for additional accommodation in order to manage and oversee the enterprise, and that it is required for a genuine agricultural reason. This functional need is likely to become even greater, if the suckler and store cattle herds expand as proposed.

Financial test

34. The appellants have provided financial data in support of the appeal. The profit & loss accounts for Ian Appleyard as a sole trader in the years 2008, 2009,
2010 and 2011 show the net profit of the business was £9,285, £1,308, £1,644, and £62,109 respectively. The profit figures for the Partnership for the years 2012 and 2013 were £28,150 and £32,042 respectively.

35. The Council has raised concerns that there is an insufficient income to support the salaries of two farm workers, and that the variations in profit indicate the business is unstable. However, based on the accounts supplied, I see no reason to doubt the financial viability of the business or that the future profitability of the enterprise is in question. All the accounts show the business has been profitable, at varying levels, over the past few years. Once the planned expansion takes place, the profitability of the enterprise should increase correspondingly. Overall, I conclude that the financial test is met.

Other Matters

36. The Council has raised concerns regarding the site's inaccessible and unsustainable location, in remote countryside with limited public transport. However, the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Although the occupiers of the dwelling would be reliant on the private vehicle for access to shops and services, this is not unusual in rural areas, and is generally accepted when an agricultural worker's dwelling is essential. Moreover, permanently residing on Kingwell Farm would eliminate the need to travel from an off-site dwelling, so in that respect, the proposal would reduce the need for private vehicle trips.

37. On this issue, I find no conflict with Policy T1 of the Local Plan which seeks to encourage the development of balanced communities by seeking to reduce the adverse impact of all forms of travel on the natural and built environment.

Overall Conclusions

38. Applying both the functional and financial tests, taking the evidence as a whole, and having regard to the lack of other suitable accommodation in the locality, it seems to me that there is an essential need for Jason Appleyard to reside on the site, in addition to Ian Appleyard. Assuming the continued expansion of the suckler and cattle herd occurs as planned, this functional need will become even greater. I have no reason to suppose that the appellants are seeking to manipulate the planning system merely to secure planning permission for a further rural dwelling.

39. I am satisfied that the proposal for an additional dwelling complies with Paragraph 55 of the Framework precluding isolated homes in the countryside unless there are special circumstances. It would comply with Policy HG.10 of the Local Plan. Importantly, it would also comply with Paragraph 28 of the Framework which supports a prosperous rural economy, including the promotion and development of agriculture and other land based rural businesses. It would accord with the economic objectives of the Framework which require the planning system to contribute towards building a strong and competitive economy, and securing growth to create jobs and prosperity.

40. The proposal would be inappropriate development in the Green Belt which is, by definition, harmful. According to the Framework, substantial weight has to be given to any harm to the Green Belt. The proposal would harm the openness of the Green Belt, but to a limited degree. However, I conclude that
the agricultural need and the economic benefits weigh heavily in favour of the appeal and clearly outweigh the totality of harm the scheme would cause through inappropriateness and other Green Belt harm. Consequently, I am satisfied that very special circumstances exist which justify the development in this case. Therefore, I see no conflict with either the Framework or Policy CP8 of the Core Strategy.

**Conditions**

41. I have reviewed the conditions suggested by the Council. As well as the usual outline commencement conditions, the rural location of the site means an agricultural occupancy condition is necessary to comply with national and local policy. Because the site is within the Green Belt and the countryside, a condition restricting permitted development rights is necessary to protect the character and appearance of the locality. For similar reasons, and to ensure that the size of the dwelling is commensurate with the functional requirements of the agricultural enterprise, a condition is necessary to restrict the floor area of the dwelling, and to ensure it is single storey.

42. For the reasons above, and subject to these conditions, I conclude that the appeal should be allowed.

*Matthew C J Nunn*

INSPECTOR

**Annex A – Conditions**

1) Details of the appearance, layout, landscaping, access, and scale, (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) 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 of such a person, and to any resident dependents.

5) The agricultural worker's dwelling hereby permitted shall comprise a single storey building with a floor area not exceeding 150m².

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement, improvement or other alteration to the dwelling or provision of buildings, structures or enclosures within its curtilage, that fall within the terms of Schedule 2, Part 1, Classes A, B, C, D, & E of that Order.
APPEARANCES

FOR THE APPELLANT:
Helen Lazenby    Clive Miller & Associates
Ian Appleyard   Appellant
Jason Appleyard Appellant
Richard Appleyard Agricultural Advisor
Bernice Appleyard Observing
Michelle Appleyard Observing

FOR THE COUNCIL:
Christopher Griggs-Trevarthen Planning Officer, Bath & North East Somerset Council
Richard Anstis Agricultural Consultant for the Council

INTERESTED PERSONS

Christopher J Thomas Parish Council

DOCUMENTS SUBMITTED AT THE HEARING


3. Appeal decisions APP/Y1138/A/12/2181808 & 2181821 & 2181807, submitted by the appellants.

4. Copy of decision for planning permission (Ref WC/015747 B) for the erection of an agricultural dwelling, land off Hayeswood Rd, dated 14 October 1994, submitted by the appellants.

5. Accounts (I W & J M Appleyard), year ending October 2013, submitted by the appellants.