
Appeal Decision

Hearing Held on 17 December 2019

Site visits made on 16 December 2019 and 17 December 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Appeal Ref: APP/L3245/W/19/3234646

The Gorstings, Bings Heath, Shrewsbury, Shropshire SY4 4DA

- 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 Ms L Bateman against the decision of Shropshire Council.
 - The application Ref 18/05651/FUL, dated 7 December 2018, was refused by notice dated 7 February 2019.
 - The development proposed is described as: 'provision of a lodge (under the Mobile Homes Act) as an Equine Workers Dwelling together with siting of Bio-Disc Sewage Treatment Plant'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description in the banner heading above is taken from the application form. Notwithstanding its reference to the Mobile Homes Act, the appellant confirmed that permission was sought for the dwelling to be located on the site permanently, rather than for any specified temporary period. The Council confirmed that it had considered and determined the application on that basis. Accordingly, I have considered the appeal on the same basis, as an application for a permanent dwelling. I have based my consideration on the building as shown on the submitted floor plan and elevation drawings, and have treated the accompanying photographs as indicative only.

Main Issue

3. The main issue is whether the proposed equine worker's dwelling is justified by the equine operations at the site, having regard to policies which seek to restrict development in the countryside.

Reasons

Background and relevant policy

4. The dwelling would be located adjacent to existing stables, in a wider area of open land in the countryside just outside the small settlement of Bings Heath.
5. Policy CS5 of the Shropshire Local Development Framework: Adopted Core Strategy (the Core Strategy), adopted March 2011, states that new development will be strictly controlled in accordance with national planning

policies protecting the countryside. It sets out several circumstances in which development may be permitted where it improves the sustainability of rural communities by bringing local economic and community benefits. Those include dwellings to house essential countryside workers. In such cases, Policy CS5 states that applicants will be required to demonstrate the need and benefit for the development proposed, and that it will be expected to be linked to other existing development and business activity where appropriate.

6. Policy MD7a: Paragraph 2.b. of the Shropshire Council Site Allocations and Management of Development Plan (the SAMDev Plan), adopted December 2015, states that dwellings to house essential rural workers will be permitted if, in the case of a primary dwelling to serve a business without existing permanent residential accommodation, relevant financial and functional tests are met, and it is demonstrated that the business is viable in the long term and that the cost of the dwelling can be funded by the business.
7. The main parties agreed at the hearing that the proposed development would comprise a primary dwelling to serve a site without existing residential accommodation, and that paragraph 2.b of Policy MD7a is therefore relevant. However, the appellant contends that the operations on the site do not comprise a business, and that the requirement therein for financial tests to be met therefore does not apply. I shall return to this matter below.
8. The Council's Type and Affordability of Housing Supplementary Planning Document (the SPD), adopted September 2012, sets out that the system of granting occupational dwellings must be based on an accurate assessment of the needs of the enterprise and that applicants will be required to demonstrate that a dwelling is essential by showing a functional need for the occupier to be present at the business for the majority of the time ("time" being 24 hours a day, 7 days a week as defined in the SPD).
9. Paragraph 79 of the National Planning Policy Framework (the Framework) states that planning decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work. The dwelling would be located in open fields and may be somewhat remote from local shops and services. However, it is close to other dwellings in Bings Heath, including those just beyond the wider site boundary to the north, and is not so physically separate or remote from other development as to be isolated for the purposes of the Framework. The criteria in Paragraph 79 therefore do not apply in this case.

Operations on the site

10. Permission was granted in 2006 for a development described as the erection of a building to provide 5 stables, hay barn, tack room and wash box, and the laying of hardstanding around the building¹. Condition 5 of that permission states 'there shall be no commercial use of the stables, including livery at the site'. At the time of my visit, 4 of the permitted stables were occupied, one stall was in use as a hay store, one as a wash room, and 2 stalls were vacant.
11. At the time of my visit, a second timber building was also present on the site, containing 8 stalls. Of those, 6 were occupied by horses, one was vacant, and one contained seats and drink-making facilities which are used by the appellant

¹ Application ref: 06/1240/F

and volunteers. However, as was confirmed by both main parties at the hearing, that further stables building does not have the benefit of planning permission. Nor has any Lawful Development Certificate been sought or granted to establish its lawfulness or immunity from enforcement action by the Council.

12. The appellant keeps a number of her own horses at the site, and has used some of those horses for breeding in the past. However, her mares are now retired from breeding and she confirmed that, whilst not ruling out such activities again in the future, no breeding is currently taking place at the site.
13. The appellant also provides accommodation and rehabilitation at the site for a number of horses which have been rescued, including overspill accommodation for horses rescued by the RSPCA. At present, the horses on the site also include a retired racehorse and a further rescue horse which are owned by people who live locally and who volunteer at the stables in exchange for keeping their horses there.
14. The care of the appellant's own horses would not comprise commercial activity. Nor would her taking in rescue or retired horses on her own behalf or for the RSPCA constitute a 'commercial use, including livery' as precluded by the condition on the 2006 permission, since she receives no payment from the RSPCA for doing so. The provision of voluntary labour in exchange for keeping horses on the site could be viewed as a form of payment in kind. However, as a matter of fact and degree, having regard to that accommodation as a proportion of the site's overall use, I am not convinced that it represents commercial use or livery. Therefore, I am satisfied that the nature of the operations taking place on site are not outside the scope of what condition 5 of the 2006 permission allows.
15. However, whilst the nature and extent of that existing activity forms the basis of the appellant's justification for a new dwelling on the site, a significant proportion of the stables on the site do not have the benefit of planning permission. Nor has it been demonstrated to me that those further stables are immune from enforcement action. I therefore afford little weight to those unauthorised stables, or to the activities associated with caring for any animals housed therein, in considering whether the financial and functional tests to justify a new dwelling in the countryside are met, in accordance with relevant development plan policies. Rather, in making that consideration, I have considered the nature of the operations on the site only insofar as they could be accommodated and carried out within the scope of the development which received permission in 2006 and the conditions on that permission.
16. As I have found that the site's operations would not constitute commercial activity, there can be no 'business' with which to associate a permanent dwelling on the site. However, the dwelling would nonetheless be associated with existing development insofar as it is permitted on the site, and would provide some benefits as a rural operation providing care and rehabilitation for abandoned or abused horses. Therefore, having regard to Core Strategy Policy CS5, there is still scope for residential accommodation to be provided in association with that use, subject to appropriate functional and financial justification being demonstrated.

Functional need

17. The appellant works a large number of hours at the site during the daytime, in addition to her full-time paid employment elsewhere 6 nights a week. She is supported in running the operation by a number of volunteers, and I understand that either the appellant or a volunteer is regularly present on the site overnight. I heard that rescued or retired horses may have suffered abuse or have complex medical requirements and may thus be more likely to require a greater level of attention, including at times during the night, than horses kept for an owner's own recreational use. In those circumstances, I understand that having an on-site presence may allow closer monitoring of animals and a more rapid response than would be possible from existing dwellings nearby such as those drawn to my attention by the Council, and may also have security benefits.
18. However, whilst I recognise the amount of work involved in the operation as it currently functions, it is based on a level of stables accommodation, and thus a number of horses, more than double that which was permitted in 2006. Accordingly, the weight that I give to that existing operation and its associated labour requirements as justification for the proposed dwelling is very limited.
19. As the 5 permitted stables would allow the keeping of only 5 horses on the site, any operation based on those permitted stables would thus be very limited in scale. Even if all of those 5 stables were to accommodate rescued horses, or if breeding were taking place at the site, from the evidence before me I am not satisfied that such a small-scale operation would necessitate an on-site presence 24 hours a day, 365 days a year. Therefore, from the evidence before me, and on the basis of the very limited number of horses that the permitted development on the site could accommodate, I conclude that there is not a compelling functional need for a dwelling in the countryside, having regard to the terms of relevant development plan policies and the SPD.

Financial test

20. The operation at the site may not function as a 'business' with accounts, profits and losses. However, a dwelling in the countryside in association with that operation would represent an exception to local and national planning policy which seeks to protect the countryside from inappropriate development. Having regard to relevant development plan policies, the operation, and thus the justification for any associated dwelling, must therefore be demonstrably sustainable and likely to continue operating in the longer term.
21. The rescue and rehabilitation operation is funded from the wages from the appellant's paid employment, with further supplementary funding provided by her father. The operation on the site appears to have been established and funded on that basis for a number of years and, with appropriate supporting evidence, it may be possible to demonstrate its financial viability. The appellant gave some indicative sums with regard to her typical income and some of the costs associated with the running of the operation at the hearing. However, I do not have detailed evidence before me in the form of any comprehensive assessment of the available income and the outgoings for the operation to demonstrate that it would be viable in the long term, were I to grant permission for the dwelling.

22. Furthermore, the existing operation is based on a level of stabling accommodation beyond that which has planning permission, and I have nothing substantive before me to indicate how an operation based on the more limited level of permitted stable accommodation might function, including with regard to its funding and financial sustainability.
23. Therefore, on the basis of the evidence before me, it has not been demonstrated that an enterprise based on the permitted stables accommodation would be viable in the long term. Accordingly, and having regard to the requirements of the relevant development plan policies and the SPD as set out above, I conclude that the financial test and therefore the justification for a new dwelling in the countryside is not met.

Conclusion on the main issue

24. A dwelling would no doubt provide the appellant with a greater degree of convenience than the existing arrangement, and could be used by volunteers present at the site during the day and outside of normal working hours. However, for the reasons given, on the basis of the evidence before me and having regard to the limited number of stables permitted on the site, it has not been demonstrated that there is a functional need for a permanent dwelling on the site or that an operation based on that number of stables would be financially sustainable as a justification for the development in the long term.
25. Therefore, I conclude that the proposed permanent equine worker's dwelling is not justified by the equine operations at the site, having regard to policies which seek to restrict development in the countryside, specifically the terms of Core Strategy Policy CS5 and SAMDev Plan Policy MD7a and the SPD as set out above.

Other Matters

26. It is evident from the submissions before me, including letters of support from the RSPCA and the appellant's vets, and from evidence given by interested parties at the hearing, that the appellant is committed to providing a high standard of accommodation and welfare to the horses in her care. The operation would thus represent a significant benefit to animal welfare, as well as community benefits through the engagement of volunteers. Those benefits weigh in favour of the proposal even though, as a non-commercial operation, its benefit to the rural economy would be limited. However, in the absence of a compelling functional or financial case to justify a permanent dwelling on the site, in this case those benefits would not outweigh the conflict with development plan and national policies which seek to protect the countryside.
27. I understand that a caravan has been located on the site for a number of years, and has been used by the appellant for sleeping at the site, and as a welfare facility for volunteers at other times, including overnight. However, that caravan does not have the benefit of planning permission, nor has its lawfulness or immunity from enforcement action been established via the seeking or granting of any Lawful Development Certificate. Consequently, it has not been demonstrated to me that a lawful residential use has been established on the site, and I therefore afford the caravan's presence little weight as a fallback position or justification for establishing a permanent residential dwelling on the site.

28. I have had regard to other concerns raised by interested parties, including in relation to drainage in the local area. However, as I have found the proposal unacceptable for other reasons, I have not needed to consider those matters further in this instance.

Conclusion

29. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Jillian Rann
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Lisa Bateman	Appellant
Trevor Mennell	Planning and Architectural Consultant, Trevor Mennell Planning
Kathie Mennell	Planning Administrator, Trevor Mennell Planning

FOR THE LOCAL PLANNING AUTHORITY:

Philip Mullineux MTCP MRTPI	Principal Planner, Shropshire Council
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INTERESTED PERSONS:

Morgan Bateman
Philip Bateman
Abby Davies
Tracy Evans
Edward Hammond
Caroline Haycock
Derek Thompson
Tracey Thompson

DOCUMENT SUBMITTED AT THE HEARING

1. Appeal decision reference: APP/L3245/A/14/2228146