
Appeal Decision

Site visit made on 8 June 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2021

Appeal Ref: APP/Z2505/C/20/3262904

Land at Oak Farm, Cut End Road, Fishtoft, Boston PE21 0SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Oakton against an enforcement notice issued by Boston Borough Council.
 - The enforcement notice, numbered PENF0343/19, was issued on 16 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land involving occupation of a static caravan for residential purposes.
 - The requirement of the notice is to cease the use of the static caravan for residential occupation.
 - The period for compliance with the requirement is 3 months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Main Issue

2. The main issue is whether the residential occupation of the caravan is justified by an essential need for a rural worker to live permanently at or near their place of work.

Reasons

3. The site is in the countryside, beyond the limits of Fishtoft, on an unlit lane without footways. There is a small group of dwellings on the opposite side of the lane and others are scattered on nearby lanes. A post office and shop are 1.4 and 1.6 miles away respectively, although their locations are not given, and it is unclear whether the distances are by road or as the crow flies. A bus stop with an hourly service to Boston is 10 minutes' walk away. Taking all these facts into consideration, the site is physically separate and remote from any settlement.

4. New isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work. The Planning Practice Guidance identifies considerations that may be relevant, although the list is not exhaustive. Those relevant in this appeal are:
 - Evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise (for instance, where farm animals or agricultural processes require on-site attention 24-hours a day and where otherwise there would be a risk to human or animal health or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products);
 - The degree to which there is confidence that the enterprise will remain viable for the foreseeable future; and
 - In the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period.
5. The appellant identifies that pigs can become ill or suffer injury at any time, and that regular checks can ensure that potential problems are addressed in a timely manner, day or night. While there is no reason to dispute this, no evidence about the nature of illnesses and injuries or their likelihood has been provided. Neither is there evidence that alternative approaches not involving residential use of the caravan were investigated and found unsuitable.
6. More information is provided in respect of farrowing, which usually occurs at night and carries the risk that a sow may inadvertently kill her new-born piglets. A stronger case therefore exists for an on-site presence to allow timely intervention at farrowing time. However, no details of the breeding cycles employed at the site have been provided. As a result, it has not been demonstrated that the need is continuous or frequent, rather than temporary and occasional, determined by the gestation cycle.
7. While pigs may be startled at night and may exploit insecurities in the site's fencing, no evidence of the likelihood of these risks is provided. As such it has not been demonstrated that these issues can only be managed by a residential presence rather than other approaches, such as routine inspection and maintenance of site fencing. Similarly, while rare breed animals may have a high value, and thus be attractive to thieves, there is no evidence that alternative prevention measures were investigated and found unsuitable.
8. Foxes have entered the site and will take very young piglets if they can. However, it is not stated whether they reached the area where the pigs are, and no losses of piglets have been identified. While reference is made to vandalism and theft, no details of incidents have been provided. Accordingly, it has not been demonstrated that security measures that do not involve a residential presence were investigated and found unsuitable.
9. It is understandable that the appellant wishes to eliminate or minimise travel time at the beginning and end of long working days. However, while he could not find affordable accommodation in Fishtoft, there is no evidence that efforts were made to find suitable accommodation elsewhere in the locality. The Council identified several properties in the local area in its statement and while

the appellant's financial circumstances have not been stated, he has not indicated that those properties are unsuitable.

10. The appellant is confident that he has a good business model which, given the right assistance, will prove sustainable and will benefit the local community. However, no evidence that the business will remain viable for the foreseeable future has been provided. It remains possible that a case might be made for the residential use on a temporary trial basis while the enterprise is new. However, it would still be necessary to demonstrate a functional need and that alternatives to residential use in a location that is physically separate and remote from any settlement have been considered, which is not the case.
11. The absence of evidence from the appellant on the foregoing matters limits the weight that can be afforded to his case for a residential presence at the site. Accordingly, an essential need for a rural worker to live permanently at the site has not been shown to exist and it has not been demonstrated that the residential occupation of the caravan is necessary to the countryside location. The deemed planning application would therefore be contrary to policy 1 of the South East Lincolnshire Local Plan 2011-36 (the Local Plan) and part 5 of the National Planning Policy Framework (the Framework).

Other matters

12. Although not included in its reasons for issuing the notice, the Council refers to the effect of the development on the character and appearance of the area, living conditions and flood risk.
13. The stationing of the static caravan for purposes ancillary to the pig farm, but excluding residential use, has been certified lawful¹. The residential occupation of the caravan would not alter its effect on the character and appearance of the area but could give rise to additional parking and outbuildings and thereby domesticise the site, contrary to its rural setting. However, these are matters that could be controlled by condition if planning permission were to be granted.
14. In view of the separation from other dwellings, the residential occupation of the caravan would not have any adverse effect on nearby occupiers. Proximity to a pig farm may give rise to concerns about living conditions in some instances. However, if this development were approved it would be due to agricultural need and occupation could be limited to a person or persons working at the pig farm by means of a planning condition.
15. Policy 4 of the Local Plan states that caravans intended for permanent residential use will not be permitted in areas at risk of flooding. The site lies within Flood Zone 3a, and so has a high probability of flooding. Caravans for permanent residential occupation are highly vulnerable to flooding. Local Plan policy 4 and the Framework require applicants for planning permission in such locations to submit a Flood Risk Assessment (FRA). While an FRA has been submitted, it makes no reference to the static caravan and therefore provides no support to the deemed planning application for its residential occupation.
16. It has previously been indicated that, in the event of a breach in nearby sea defences, some parts of the site could be under between 0.7m and 1.6m of water. In view of the identified risks, the Environment Agency has advised that flood risk mitigation measures would be unlikely to overcome this concern.

¹ B/20/0215, issued 15 October 2020

Consequently, the residential occupation of the caravan is not justified by an FRA and would be contrary to Local Plan policy 4 and Part 14 of the Framework. This is an additional reason why planning permission should not be granted.

17. The appellant has planted hedges and trees and has employed a local landscape gardener on a part time basis to maintain the site. This and other contributions to the local economy are to be welcomed. However, it has not been demonstrated that continued maintenance of the site and contribution to the local economy are dependent on the residential occupation of the caravan. Accordingly, these matters do not alter my conclusion on the main issue above.
18. While reference has been made to a proposal for 66 new homes on the edge of Fishtoft, details of that proposal and the planning status of the land involved have not been provided. Accordingly, I am unable to give weight to this matter in the planning balance.

Conclusion

19. For the reasons given, the use of the static caravan for residential occupation does not comply with the development plan and this conflict is not outweighed by other material considerations. I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

Mark Harbottle

INSPECTOR