

Pins Ref 2222376	Land South of Brentani, Brightwalton, RG20 7BP	New dwelling in connection with animal chiropractic practice.	Dele. Refusal	Allowed. 5.11.2014
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Preliminary Matters

Notwithstanding the Council's written evidence, at the hearing both main parties confirmed that the planning application includes a proposed chiropractic use for the treatment of humans and animals. The appellant advised, and the Council agreed, that the proposed use is as set out in the appellant's Business Plan except that it would not include livery facilities / services. In summary the proposal is a package, which includes this chiropractic use and the dwelling. Accordingly, the Inspector determined the appeal on this basis. Although the description of development as it appears on the planning application form embraces all aspects of these proposals, for the avoidance of doubt, he amended it slightly in his formal decision to make it clearer what is proposed.

At the hearing the Council indicated that, in light of the submission of a revised Unilateral Undertaking (UU), it has withdrawn its second reason for refusal concerning the effect of the appeal development on local infrastructure.

The Statement of Common Ground includes a *Planning History of the site*. Both main parties confirmed at the hearing that this planning history was included erroneously as it relates to land outside the appeal site.

Main Issue

During the hearing the Inspector identified the main issue as whether there are any circumstances justifying the proposed dwelling as an exception to planning policies that seek to restrict development in the countryside. However, having heard the evidence, he considered the main issue is better expressed as whether the proposed development would fall within the types of development seen to be acceptable or permissible in the countryside.

Reasons

Background

The appellant is a qualified chiropractor. She has run a chiropractic business as a sole practitioner for some ten years treating humans and animals. While the business operates from her parents' home, Bricklewood in Brightwalton, she lives in East Ilsley some 6 miles away with her husband and young children. Humans and small animals are treated at Bricklewood, while a visiting service is offered for larger animals, predominantly horses.

It is proposed to widen the equine service by receiving horses at the appeal site for intensive treatment, for instance over 24 to 48 hours, and for rehabilitation following injury, which may involve several weeks on site. By offering overnight facilities for horses, chiropractic services could be provided to customers across a wider area than the appellant can offer via a visiting service. The evidence indicates that the appellant currently treats a range of different horses from family ponies to show jumpers, eventers, dressage horses, racehorses and hunters. Horses brought to the site would be kept using existing facilities. A new three-bedroom house is also proposed for the appellant

and her family to live in. The house would include a treatment room and waiting area for small animals and human clients.

The site is located a little to the south of Brightwalton within the North Wessex Downs AONB. It has a history of equine use over several years. Since around 2011 it has been used by the appellant and her parents for the keeping of their horses for their own enjoyment. The site is some 0.2 hectares in area and comprises two rows of stables / loose boxes and a yard / paddock area with vehicular access to a road to the west. The land to the east, which is used for grazing and exercising their horses, does not form part of the appeal site.

Policy Framework

Policy ADDP1 of the West Berkshire Core Strategy July 2012 (the Core Strategy) sets out the Council's strategy for development across West Berkshire. The site is located in the countryside outside the areas identified for development in Policy ADDP1. The Policy states that *only appropriate limited development in the countryside will be allowed, focused on addressing identified needs and maintaining a strong rural economy.*

Policy HSG.1 of the West Berkshire Local Plan 2007 (the Local Plan) identifies that new housing development will normally be permitted within the boundaries of a series of settlements including Brightwalton. The appeal site, although close to the southern fringes of the village, is located some way beyond the identified settlement boundary.

Although not cited in the reasons for refusal, the Inspector's attention was also drawn to Policy CS12 of the Core Strategy which concerns development associated with the equestrian / racehorse industry. The Policy sets out that new residential accommodation in the countryside will be permitted where genuine need is suitably demonstrated through a business case and accommodation cannot reasonably be secured within the existing settlement.

The National Planning Policy Framework (the Framework) is a weighty material consideration yet it does not change the statutory status of the development plan. The Local Plan pre-dates the Framework. Policy HSG.1 is broadly consistent with the Framework including paragraphs 28 and 55 which concern *supporting a prosperous rural economy* and *rural housing* respectively. Paragraph 55 states that isolated homes in the countryside should be avoided unless there are *special circumstances* including the essential need for a rural worker to live *permanently* at or near their place of work in the countryside.

In order to determine whether a need is both essential and permanent it seemed to the Inspector that it is not only necessary to establish whether there is a physical need for someone to be on-site at most times, for instance to care for customers' horses, but also whether the operation itself has reasonable long term prospects such that it can be regarded as permanent. Therefore, whilst a 'financial test' of the kind previously identified in the now cancelled PPS7 does not feature in the Framework, the Inspector saw no reason to discount it as a potentially useful tool in assessing whether permanent residency would be justified.

The Need for the Dwelling

At the hearing the Council made it clear that it does not question the functional need for the accommodation in terms of its relationship with the proposed chiropractic use. Although not before the Council when it determined the planning application, the appellant's business accounts for the period 2004 - 14 were submitted prior to the hearing. The first refusal reason specifies a lack of evidence to demonstrate viability. However, in light of these accounts and the wider evidence, at the hearing the Council did not contest viability.

In essence the Council's remaining objection is that before allowing a new home in the countryside it should be first demonstrated that there are no other alternative facilities available. Nonetheless, in considering whether there is an essential need for the dwelling it seems to the Inspector that I should have some regard to whether the proposed expanded business use would justify a permanent residency at the site and whether the business would be viable. I am also mindful of the submissions from interested parties regard essential need.

Given that the use would involve accommodating horses receiving short intensive treatment requiring an overnight stay and longer term rehabilitation, it is likely that in equine welfare terms a high level of supervision would be required. Indeed, even a single racehorse, which is likely to be both valuable and highly strung, is likely to require a high level of care. The information before me indicates that there is a market for this kind of service. The appellant's uncontested evidence also indicates that without on-site supervision clients would not be prepared to leave their horses due to concerns over care, safety and theft.

Nonetheless, taking this line of argument to extremes may suggest that caring for even a single racehorse is sufficient justification for a permanent dwelling. This is clearly unsustainable and could lead to a proliferation of isolated dwellings in the countryside. It is therefore necessary to look also at the operational demands of the enterprise and its viability.

The existing business has operated for some ten years. The accounts show that the business made a small loss and then a small profit in its first two years. With the exception of three years when trading was significantly affected by maternity and childcare, subsequent years have show a reasonably consistent profit, ranging from £15,819 to £25,721 per annum. At the hearing the appellant explained that the majority of turnover results from treating horses rather than humans. The Inspector also heard uncontested evidence regarding how the proposed dwelling would be financed.

In view of these accounts and evidence, along with the contents of the Business Plan and the Equine Statement regarding how it is proposed to develop the business, the Inspector found that the proposed business use would be likely to be viable now and in the long term and that it would generate sufficient profit to cover the cost of delivering the proposed dwelling as well as providing the operator with a reasonable salary.

The evidence includes a range of properties that are or have been available in the vicinity of the site. At the hearing the appellant confirmed that the dwelling need not necessarily be located within the appeal site, but that it would have to be close by in order to provide for the welfare and protection of horses that would be in the operator's care. In this regard she indicated a property such as Brentani, located immediately to the

north of the appeal site, would be suitable but that other properties in the village and in the wider area are too far removed from the site to provide the requisite level of supervision. The Council did not contest this point and from the information before him, he found no good reason to disagree.

The evidence also indicates that Brentani had been available to buy. At the hearing the Inspector was advised that it was sold to another party earlier this year. The appellant explained that she had looked into the possibility of the buying Brentani. She indicated that it was on the market for some £500,000 and that this would be far beyond the means of her enterprise. While the Council did not dispute this, it did submit to the hearing that land and property values should not be relevant to a planning decision; otherwise there could be a 'free for all' for new dwellings in the countryside by those who cannot afford the market value of existing properties.

While the Inspector was very sympathetic to the Council's concerns in this regard, he was not persuaded that such a 'free for all' would result. This is because, generally, proposed dwellings in the countryside would still have to accord with the requirements of the development plan and with the Framework as a material consideration, including that *special circumstances* must be demonstrated in the terms of paragraph 55.

The Council also maintains that, before allowing the proposed dwelling, potential alternative premises should be considered such as existing stables with an associated dwelling. However, Core Strategy Policy ADDP1 and Local Plan Policy HSG.1 do not carry any such requirement and neither does the Framework. The Council has not provided any specific evidence regarding the availability of such alternative facilities. At the hearing the appellant stated that no such facilities are available in the area and that a property of that type would be of such a high market value that it would be far beyond the means of the enterprise. The Council restated its concerns regarding the weight given to property values in planning decisions. However, viability is an integral part of the assessment of the sustainability of a rural enterprise and as such it is a legitimate consideration in the appraisal of the appeal development.

In summary, therefore, an essential need for the appellant as a rural worker to live permanently at or near the proposed place of work has been demonstrated. From the evidence the Inspector also had no good reason to believe that there are suitable alternative premises available.

He therefore concluded that the specific circumstances of the case justify the proposed dwelling as an exception to planning policies that seek to restrict development in the countryside. Consequently, in this regard, the proposed development does not conflict with Policies ADDP1 of the Core Strategy and HSG.1 of the Local Plan or with the Framework.

Other Matters

The Council submitted a suite of detailed statements supporting the need for contributions for education, public open space, transport, adult social care, library facilities and waste management. He considered these in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government guidance on the use of planning obligations.

The Council has also identified the amounts sought drawing on the evidence and methodology set out in Topic Papers that form part of the Council's Delivering Investment from Sustainable Development – Supplementary Planning Document 2013 (the SPD). The SPD also identifies that the principle for such contributions is established by Policy CS5 of the Core Strategy.

In the case of education, open space, libraries, waste management and transport, specific schemes or enhancement of existing facilities local and relevant to the development are identified and the Inspector was satisfied that the contributions sought are necessary and reasonably related to the proposal. No specific facilities or improvements are highlighted in relation to adult social care. However, given the nature of provision for such services, he considered the submissions adequately reflect the relationship between the increased population and the need for contributions.

The appellant has submitted a UU that addresses these matters, which for the foregoing reasons he found are necessary to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind to it.

The site is located within the North Wessex Downs AONB. The proposed dwelling is of a modest scale and incorporates design features and materials that are typical of the dwellings the Inspector observed in Brightwalton. The development would be reasonably well screened from the public domain by mature planting and existing development along and around the road that runs to the west of the site. When viewed from the south the development would be seen against the backdrop of existing development and planting in the village. The proposed use would be akin to the existing use in terms of its effect on the character and appearance of the area but would also generate income to support the maintenance and enhancement of the site. Overall, therefore, the appeal proposal would preserve and enhance the natural beauty of the area.

In addition to the foregoing matters concerns have been expressed locally regarding how the previous use of the site is portrayed in the evidence, the limited size of the site / adequacy of grazing land and the proposal's effect on highway safety. As this is an appeal under s78 of the above Act, the lawful use of the site is not a matter for my determination; the Inspector dealt with the appeal on the basis of the use of the site as it is now as summarised in his paragraph 8 above. At the hearing the appellant explained that a larger area for exercise and grazing purposes is not required as the horses would be confined to the site in order to receive treatment and ensure adequate supervision. Subject to planning conditions and obligations the Council and highway authority have no objection to the proposed development on highway safety grounds. He found no reason to disagree.

The Inspector's attention was been draw to other proposed development. However, each proposal falls to be assessed primarily on its own merits and, in any event, he was unaware of the full circumstances associated with any such other case.

Conditions and Conclusion

In addition to the standard time limit condition the Council has requested a number of conditions which he considered in the light of government guidance on the use of conditions in planning permissions and made adjustments accordingly.

For the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would be necessary. Given the sensitive location, conditions controlling facing materials and landscaping would be necessary to protect the character and appearance of the area. A condition to ensure that any gates at the access are inward opening only and set at least 10 metres back from the carriageway would be necessary to ensure that the carriageway is not obstructed in the interests of highway safety.

A condition would also be necessary to ensure that the proposed dwelling would be used only in association with the proposed horse treatment use. To this end, the Inspector amended the Council's suggested wording, including the removal of reference to occupants who have 'retired' as someone who had retired would not need to reside at the property and would also prevent occupation by someone who may be employed in the use.

The Council has requested a condition to control ground levels of the proposed building and management of soil/spoil during construction. The levels of the proposed building are clearly shown on the submitted drawings, which would be controlled by a condition described above. The Inspector was not provided with any evidence that gave him good reason to believe that it would be necessary to control the management of soil and spoil.

The Council has suggested a further condition which refers to land outside the appeal site, an agricultural holding and potential future use of the site. The proposed development would not rely on land beyond the site, the proposed use is not agricultural, the use of the dwelling would be controlled by a condition described above and the other uses identified would require a separate planning permission. Therefore, such a condition would also be unnecessary.

For all of the reasons given above, he concluded the appeal should, subject to the identified conditions, be allowed.

Decision

The appeal is allowed and planning permission is granted for a new dwelling and animal chiropractic practice at Land South of Brentani, Brightwalton, Newbury, Berkshire RG20 7BP in accordance with the terms of the application, Ref 14/00759/FULD, dated 26 March 2014, subject to the conditions contained within the Schedule at the end of this decision.

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/W0340/A/14/2222376:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Drawing No CS/MS.1/01C; Drawing No CS/MS.1/02B; Drawing No CS/MS.1/03; Drawing No CS/MS.1/04; Drawing No CS/MS.1/05A.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Any gates to be provided at the vehicular access shall open only into the site and shall be set back a distance of at least 10 metres from the highway carriageway.

5) No development or other operations shall commence until full details of landscape works have been submitted to and approved in writing by the Local Planning Authority. The details shall include schedules of plants noting species, plant sizes and proposed numbers/densities, an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. The scheme shall ensure:

- Completion of the approved landscape scheme within the first planting season following the completion of the development; and
- Any trees or plants that die or become seriously damaged within a period of five years from the completion of the development, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

6) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working in the treatment of horses, as hereby permitted, on the site, as defined by the redline on the location plan identified in Condition 2, or a widow or widower of such a person and to any resident dependants.

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