



Appeal Decision

Hearing held on 6 October 2009
Site visit made on the same day

by **Jacqueline North BSc MSc**

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

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Decision date:
24 November 2009

Appeal Ref: APP/H0738/A/09/2108209
Shed 2, Ouston Moor Farm, Drovers Lane, Redmarshall, Stockton, TS21 1BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Miss A Dobinson (MD Equine) against Stockton-on-Tees Borough Council.
- The application Ref 08/3621/FUL, is dated 14 November 2008.
- The development proposed is a permanent workers dwelling.

Application for costs

1. At the Hearing an application for costs was made by Miss A Dobinson against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for a permanent workers dwelling at Sheds 2, Ouston Moor Farm, Drovers Lane, Redmarshall, Stockton, TS21 1BB in accordance with the terms of the application, Ref 08/3621/FUL, dated 14 November 2008, and the plans submitted with it, as modified by the submission of a revised site plan Ref 0883/01A, revised floor plans Ref 0883/02A, and revised elevations Ref 0883/03B, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in the equestrian business, or a widow or widower of such a person, and to any resident dependants.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.

Procedural Matters

3. The planning application and appeal were submitted in the name of Miss A Dobinson. Amanda Dobinson married Mr James Ellison who is also involved in
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the equine activities at Ouston Moor Farm. Accordingly, although submitting the application and appeal in the name of Miss Dobinson, the appellant is known as Mrs Ellison, and several documents refer to her in this way.

4. The Council had failed to give notice of a decision on an application for planning permission for the proposed development. Having read the Council's Statement submitted in connection with the appeal, and from what was discussed at the hearing it is my understanding that the Council would have refused to grant planning permission on the grounds that the proposed development was not justified when assessed against the tests in Annex A of Planning Policy Statement 7: *Sustainable Development in Rural areas*.

Main issues

5. I consider that the main issues are (i) whether the particular circumstances relating to the operation of the equine businesses justify the provision of a dwelling in the open countryside, taking into consideration the tests in Annex A of PPS7; and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

6. Ouston Moor Farm is located to the south of the village of Redmarshall. There are two permanent barn type structures on site, one houses approximately 20 stables, the other is used as a storage barn for straw and hay. The farm covers an area of approximately 1.72 ha, with the land split into an area of approximately 1.33 ha laid to grass, and 0.39 ha occupied by the buildings and areas of hardstanding. Around the site there are a series of bridleways, a cross country course and an all weather gallop.
7. The appellant has operated an equine business at the premises for in excess of five years. Temporary planning permission, reference 03/2978/COU, was granted, for a three year period, for a change of use from skinning shed to horse breaking/training and associated livery yard and siting of residential static caravan. This has since lapsed. Planning permission for the equestrian activities at the site was granted, under reference 08/3620/COU which permitted a permanent change of use from skinning shed to horse breaking, training, stud and livery yard.
8. Amanda Dobinson initially rented the land at Shed 2, but purchased the site following the marriage to James Ellison, who invested in the business and established the stud element of activities at Ouston Moor Farm. Mr and Mrs Ellison have recently obtained funding to purchase a nearby livery business, Ouston Moor Farm Equestrian Centre (Shed 1). This business comprises stables, land and arena adjacent to the existing business. The primary source of income at Shed 1 is a do-it-yourself livery business.

The proposed agricultural worker's dwelling

9. The proposed agricultural worker's dwelling is a three bedroomed one and a half storey building. It would be located between the stables building and the storage building. Policy EN13 of the adopted Stockton-on-Tees Local Plan (LP) permits new residential development in the countryside where, amongst other things, it would be necessary for a farming or forestry operation or for sports

and recreation and where it would not harm the character and appearance of the countryside. In addition guidance on development in rural areas is given in Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7).

The tests in Annex A of PPS7

10. Government guidance in PPS7 states that new building development in the open countryside should be strictly controlled. Isolated new houses in the countryside require special justification. Where a new dwelling relates to the essential need for a worker to live permanently at or near their place of work the guidance in Annex A of PPS7 should be followed. Annex A of PPS7 states that a new permanent dwelling should only be allowed to support existing activities providing it satisfies a number of tests.
11. The first test requires that there is a clearly established functional need for a dwelling associated with the enterprise. This functional test requires the appellant to demonstrate that the need exists for one or more workers to be readily available at most times, and if so, whether the nature and demands of the work makes it essential for them to live at, or very close to the business. Guidance in PPS7 advises that such a need might arise if workers are needed to be on hand day and night to provide animals with essential care.
12. A range of equine activities take place at the site, including the care of mares in foal, assistance in foaling, care of foals, the training of young horses with behavioural problems, the stud business, horse sales and livery. At the time of my site visit there were 25 horses at the Shed 2 site, and an additional 26 under do-it-yourself livery at Shed 1.
13. Some of the mares in foal belong to Mr and Mrs Ellison, others are owned by customers who entrust their horses to the appellants. Mares often give birth at night and need supervision in case of any problems. Between January and August 2008 35 foals were delivered, of which 5 needed urgent veterinary care. The foals then need feeding on an hourly basis for the first three weeks of life. Mrs Ellison looks after a relatively high number of maiden mares, having their first foal. These horses arrive three or four weeks prior to foaling and stay up to six weeks after. I accept that foaling does not occur every night, but the relatively high percentage of mares needing veterinary assistance, and the hourly feeding of foals means that there are many nights when someone needs to be present on site.
14. Mrs Ellison takes in young, unruly horses with behavioural problems. These horses often need 24 hour monitoring to ensure their safety. The appellants are responsible for these horses welfare while they are at Shed 2. Horses may become cast (unable to get up). Cast horses may panic and injure themselves, and may suffocate. A horse with colic may become cast. Colic often becomes apparent in the evening after the horse has eaten its evening meal. Treatment for colic can involve walking the horse around for hours throughout the night.
15. The stallions on site are high value animals, and can cause considerable damage if they get loose. Although the season for covering mares and foaling is approximately February to August, the foals are present for up to 16 weeks after birth, and the stallions, un-manageable horses and horses in livery are present all year round.

16. Taking into account the high number of horses on site, and their value, I consider that there is a functional need for someone to be resident on site to ensure animal welfare and provide general site supervision and security. This is supported by the evidence of the Council's equine advisor who considered that owners sending their horses to Ouston Moor Farm would undoubtedly expect there to be on site supervision and would also expect someone to be on site in case of intruders or theft. She considered that the business would be seriously affected if there was no one living on site, and that this could harm its future viability. Accordingly the proposal would accord with PPS7 in respect of the necessity for workers to be on hand day and night to provide animals with essential care, and with LP Policy EN13 as the dwelling is required in connection with an enterprise similar to a farming or forestry operation.
17. The second test relates to whether this need refers to a full-time or part-time worker, or one who is primarily engaged in agriculture, forestry, horticulture or similar rural enterprise and not to a part-time requirement. The stables and other buildings are all good quality and appeared to be well maintained. The scale of the business is beyond an activity that could be considered to be a hobby. The scale of the enterprise demonstrates that there is a need for at least one full-time worker. Mr and Mrs Ellison both work full time at Ouston Moor Farm and have developed the business over a number of years. Therefore I consider that the need for a dwelling relates to a full time worker and therefore the second test in Annex A of PPS7 is met.
18. The third requirement is that the unit and activity concerned have been established for at least three years, profitable for at least one of them, and financially sound. Submitted accounts demonstrate that the businesses have been profitable in recent years, are currently financially sound and have a clear prospect of remaining profitable. The recently agreed purchase of the Shed 1 Equestrian Centre demonstrates that the Ellisons are committed to running and developing equine activities at Ouston Moor Farm. Accordingly the proposal accords with the third test in Annex A of PPS7.
19. The fourth requirement is that the functional need could not be fulfilled by an existing dwelling on the unit or any other existing accommodation in the area which is suitable for a worker and available for occupation by the workers concerned. There is not an existing dwelling on the site, although Mrs Ellison, and more recently Mr Ellison and their child have been living in a caravan at Ouston Moor Farm. Having found that there is a functional need for someone to be on site at most times, I consider that dwelling in one of the nearby settlements, such as Sadberge, would not be suitable. Accordingly the proposal passes the fourth test.
20. The fifth requirement is that other planning requirements are satisfied. These are dealt with below.

Character and appearance

21. It is common ground between the main parties that, due to the topography of the surrounding land and the well established hedges and trees, the dwelling would be well screened from any public vantage point. The appeal site is set well back from the highway, and the dwelling would be constructed between two large agricultural buildings.

22. The dwelling would be relatively modest with attached office and customer/staff amenity area. It would provide accommodation for Mr and Mrs Ellison and their family, and as such I do not consider it to be of an excessive scale. It would be a far smaller dwelling than other, recently permitted agricultural worker's dwellings in the area. Accordingly, the proposed dwelling would not harm the character or appearance of the countryside and would accord with LP Policy GP1 which, amongst other things, requires consideration to be given to the external appearance of development and its relationship with the surrounding area, and with LP Policy HO11 which requires new residential development to provide a high quality built environment which is in keeping with its surroundings.

Conditions

23. I shall impose a condition restricting occupation to those employed or last employed in the equine business as the dwelling is required in connection with an equine business and has been allowed at the appeal site because of a proven need associated with the business, in accordance with the policies of restraint which apply to development in the countryside. I shall also impose a condition requiring samples of materials to be used in the external surfaces of the dwelling to be submitted to and approved in writing by the Local Planning Authority, and the dwelling constructed in these approved materials in order to ensure that the dwelling is in keeping with its rural location.
24. The Council suggested a condition requiring details of the ground levels and floor levels of the dwelling to be submitted and approved, and the dwelling constructed in accordance with those details. I do not consider that this consideration is necessary as the appeal site lies in a hollow, is well screened, and the dwelling would be a relatively modest one and a half storey dwelling.

Conclusions

25. Having considered all the tests required by Annex A of PPS7 and LP Policy EN13 which permit development in the countryside where it is for the operation of a use appropriate to a countryside location, I am satisfied that there is a justification for a dwelling on the site in connection with an equine business. In addition the dwelling would not be harmful to the character and appearance of the countryside and would comply with LP Policies GP1 and HO11.

Jacqueline North

Inspector

APPEARANCES

FOR THE APPELLANT:	
Steve Barker	Managing Director, Prism Planning
BSc (Hons) MRTPI DMS	
Michael Crichard	Crichard & Co.
Sean McLean	SM Design
Amanda Ellison	Appellant
James Ellison	Appellant's husband and business partner

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Glossop	Senior Planning Officer, Stockton-on-Tees Borough Council
Sally-Ann Tinsley	Equine Consultant
BSc, LLDip	

DOCUMENTS

- 1 Planning permission Reference 08/3620/COU relating to a permanent change of use from skinning shed to horse breaking, training, stud and livery yard at Stables Shed 2, Ouston Moor Farm.
- 2 Terms agreed in respect of the sale of Shed 1, Ouston Moor Farm to Mr and Mrs Ellison.
- 3 Helping a cast horse by A Tadlock -Article from The Ultimate Horse Website.
- 4 Contact details of local specialist equine veterinary centre.
- 5 Summary of key financial information.



Costs Decision

Hearing held on 6 October 2009
Site visit made on the same day

by **Jacqueline North** BSc MSc

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

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Decision date:
24 November 2009

**Costs application in relation to Appeal Ref: APP/H0738/A/09/2108209
Shed 2, Ouston Moor Farm, Drovers Lane, Redmarshall, Stockton, TS21
1BB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Miss A Dobinson (MD Equine) for a full award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a permanent workers dwelling.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Miss A Dobinson (MD Equine)

1. The Appellant considers that the failure of the Council to determine the application within the statutory time period amounts to unreasonable behaviour. Paragraph A.24 of Circular 03/2009 notes that an application for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Expense may be unnecessary or wasted because the entire appeal could have been avoided. Paragraph A.25 advises that applications may relate to what has happened before the appeal has been lodged, although it is clear that costs that are unrelated to the appeal cannot be entertained.
2. The appellant's case rests on the fact that the Local Planning Authority (LPA) failed to determine the application within the prescribed timescale. The original agent dealing with the application became frustrated with the approach taken by the LPA and called in a specialist planning consultant to assist. This new consultant attended meetings and sought to obtain a timescale by which the application could be progressed. That timescale was subsequently not adhered to by the LPA, and attempts to understand the failure to adhere to the timescale produced no clarification of what was going to happen with respect to the proposals. The LPA failed to give any indication of the timescale for determination of the application.
3. Without any warning the Council proceeded to involve a third party advisor, seven months after receiving the planning application. The Council provided the advisor with confidential financial information relating to the appellant and the businesses operated by Mr and Mrs Ellison. It seems clear that the third party advice was based upon the application as originally submitted to the Council and completely failed to take account of any of the additional information which had been submitted to the Council at its request.

4. The appellant sought clarification from the LPA as to the progress of the application and clarification of the LPA's position in respect of the application. When no clarification was received the appellant decided that the only way matters could readily and clearly be progressed within a known timescale was by means of an appeal.
5. The Council's handling of the case has continued to be unreasonable. The Council has been unable to agree a Statement of Common Ground (SCG) with the appellant. At the time at which the appellant's consultant produced the appeal statement, he had no knowledge of the Council's concerns relating to the case. The Council has singularly failed to respond to any requests to provide clarification of its areas of concern, and this has put the appellant to unnecessary expense. That unnecessary expense has amounted to the need for an appeal in the first place. Furthermore the appeal has had to look at each and every facet of the case because the Council failed to identify any areas of concern on its part.
6. The Council was well aware of the timescales associated with the appeal relating to the submission of statements and has failed to clarify its concerns ahead of the statements being required, and have failed to explain its approach to the SCG.
7. Paragraph B4 of Circular 03/2009 is relevant as it gives examples of unreasonable behaviour which may result in an award of costs. The examples include failure to produce evidence and a lack of co-operation with the other party in providing information.
8. The functional need has already been demonstrated in 2003 when temporary planning permission for a dwelling had been granted. The financial information was provided and regularly updated. It was not necessary to forensically examine this information as the appellant had agreed a substantial bank loan, and this by itself should have demonstrated that the business was financially viable. The LPA failed to give proper consideration to this evidence.
9. The LPA ignored relevant national policy, and referred to guidance in the superseded Planning Policy Guidance 7 (PPG7). In addition, the LPA has failed to determine like cases in a like manner, as workers' dwellings have been permitted at other equestrian businesses, where there is no stud facility. This demonstrates an inconsistent approach to the application of policy.
10. There had been no significant material changes in circumstances. The fact that the earlier planning permissions for both a dwelling and the business had recently lapsed should have been taken into consideration. The fact that the earlier permissions were assessed under guidance in PPG7 should not have affected the decision, as the tests in both PPG7 and PPS7 are fundamentally the same.

The Response by the Council

11. At the pre-application stage the Council met with the appellant's agent and discussed the case. The information required in order to demonstrate the functional and financial tests in Annex A of PPS7 was not discussed at any pre-application meeting. The previous planning permission had lapsed two years ago, therefore the Council approached the application as if it were a new

planning application. Throughout the process the LPA have endeavoured to get the information in order to be confident with its decision.

12. The Council found it difficult to assess whether there was a functional need as accurate information on the number of horses was amended throughout the application and appeal process. The Council then had to forward that information to the equine consultant.
13. The required statements for the appeal were submitted within the required timescale. At the time at which the appeal was submitted the Council had not determined the application for the equine businesses on the site. This was due to the necessity to receive additional information in relation to both applications.
14. The appellant has relied to some extent on Ouston Moor Equestrian Centre. This business has only recently been acquired by the Appellant and her husband, and was not considered when the Council considered the planning application, although it is to be considered as part of this appeal.

Conclusions

15. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
16. Paragraph B4 of Circular 03/2009 gives examples of unreasonable behaviour which may result in an award of costs. These include a lack of co-operation with the other party in providing information, thus extending the duration of the appeal and associated expense. Whilst I appreciate that the Council did not provide information in respect of its concerns until after the appellant's statement had been produced, this was still within the required timescale.
17. The previous permissions had lapsed two years previously, therefore it was appropriate for the Council to deal with the planning application as if it were a new application. As such it was justified to re-examine whether or not there was a functional need for a dwelling at Ouston Moor Farm.
18. Similarly, the tests in Annex A of PPS7 require the appellant to demonstrate that the enterprise has been profitable for at least one year out of the last three, and has a reasonable prospect of remaining viable. Such evidence can be complex, and it is not unusual for LPA's to seek advice from a specialist consultant.
19. I consider that the offer of a bank loan adds weight to the appellant's evidence that the business is viable, however, it was not unreasonable for the Council to examine the financial information provided, as required by PPS7.
20. The appellant had not purchased Oulton Moor Equestrian Centre at the time the planning application was submitted. The Council accepted that it was reasonable to consider this at appeal following the agreement to purchase this neighbouring equestrian centre. Accordingly additional information was required, this does not amount to unreasonable behaviour.

21. Statements of common ground are not usually submitted in cases where an appeal is dealt with through the informal hearing procedure. Guidance in Paragraph B4 of Circular 03/2009 refers to the non completion of a statement of common ground in connection with inquiries, not a hearing as is the case with this appeal.
22. I accept that the Council failed to determine the application within the prescribed timescale, and that the Council did not adhere to an agreed timescale in respect of reaching a decision. However, the Council was considering the appeal application and the application for the equine activities at the site. These were complex applications, and it was not unreasonable of the Council to request additional information and seek the advice of a specialist consultant, all of which caused some delay in the determination of the applications. However, I do not consider that this shows any lack of co-operation and it is not unreasonable behaviour.
23. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Formal Decision

24. I refuse the application for an award of costs.