



Appeal Decision

Hearing held on 15 November 2011

Site visit made on 15 November 2011

by **P T Whitehead DipTP(Nott) MRTPI**

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

Decision date: 8 December 2011

Appeal Ref: APP/H0738/A/11/2159569

**Kirklevington Riding Centre, Town End Farm, Fieldhouse Lane,
Kirklevington, Yarm TS15 9PZ**

- 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 Mrs Jennifer Brooks against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 11/1543/FUL, dated 21 June 2011, was refused by notice dated 22 August 2011.
 - The development proposed is the erection of one dwelling house to support equestrian business at Kirklevington Riding Centre, Yarm.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one dwelling house to support equestrian business at Kirklevington Riding Centre, Town End Farm, Fieldhouse Lane, Kirklevington, Yarm TS15 9PZ in accordance with the terms of the application, Ref 11/1543/FUL, dated 21 June 2011, subject to the conditions annexed to this letter.

Application for costs

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

Main Issues

3. The main issues are firstly, whether the particular circumstances relating to the operation of the equine businesses justify the provision of a dwelling in the open countryside; and secondly the effect of the proposed development on the character and appearance of the area.

Reasons

Justification for the provision of a dwelling

4. Kirklevington Riding Centre was established in 1999 by Mrs Evelyn Tate, wife of the farmer at Town End Farm. It has developed over the years and currently caters for upwards of 40 horses and ponies. Twenty or so of the animals are wholly owned by the establishment, with the remainder being separately owned and kept on 'full livery' terms. Mrs Tate is retiring and passing the

business to her daughter, the appellant, who presently lives in the village of Kirklevington, some 750m away.

5. The Riding Centre buildings are located at the northern end of the farm complex and separated from the main farm buildings south and east of the access road. The farmhouse is located at the southern end of the complex around 250m from the Centre. Evidence was given that the Riding Centre and Town End Farm are two separate business entities with the Centre, including some 12 ha of grazing land, leased from the Farm. In due course, the Riding Centre will pass to Mrs Brooks, whilst Mr Tate's son will inherit the farm.
6. The proposed dwelling is a two storey detached house with 3 bedrooms, totalling around 157m². The proposal also includes offices, a utility link to the house, a double garage and storage space above the office/garage area. The total floorspace is calculated at nearly 290m².
7. Annex A to Planning Policy Statement 7 (PPS7) advises that one of the few circumstances in which an isolated new dwelling in the countryside may be justified is where it is essential for one or more people engaged in the enterprise to live at the site. The Annex provides five tests for a new permanent dwelling.
8. The first test requires a clearly established functional need for a worker to be readily available at most times. The basic argument in this appeal is that there is such a need in order to monitor the horses on a 24-hour basis. Evidence of such need is provided by the British Horse Society and the locally-based Oaklands Veterinary Centre, including information on illnesses and incidents involving horses requiring a rapid response if serious consequences, including the potential death of an animal, are to be avoided. The information provided by Oaklands Veterinary Centre (appended to the Planning Statement for the appellant) indicating the injuries and diseases involving horses and supported at the hearing by Ms Blakiston are, in my opinion, particularly important considerations. The Council has not disputed the evidence provided, including the diary of incidents. Whilst part-time staff are employed the appellant has indicated that it would be not be possible for these to be on site until late evening for practical and operational reasons. For these reasons I consider there is a functional need for a worker to be readily available at most times, including overnight.
9. The second test requires the need to be related to a full time worker primarily engaged in a rural enterprise. The appellant has provided information that there is an annual labour need of some 24,000 hours, substantially exceeding the 1,900 hours for a single person quoted in the Agricultural Budgeting and Cost Book. The Council has not disputed this evidence and accepts that a full-time worker is required for the proper functioning of the Centre.
10. The third test is the financial test to ensure the activity has been established for at least three years and has been profitable for at least one of them, is currently financially sound and has a clear prospect of remaining so. The Centre has been established for 12 years and the accounts presented show that it has been profitable for at least the last five years. Projections show profitability continuing into 2012. In this respect the Council accepts the financial test has been met. However, the Council has questioned whether the evidence shows the enterprise can sustain the construction and maintenance of a dwelling of the size and nature proposed (Annex A, para 8). Evidence

provided (Documents 2) shows that the Centre is generating sufficient cash profit to fund the proposed dwelling.

11. PPS7 indicates that dwellings that are unusually large in relation to the needs of the enterprise, or unusually expensive to construct in relation to income, should not be permitted. In this appeal the Council considers the size of the living space not unreasonable in terms of providing an appropriate dwelling. However, taking account of the office and related ancillary space, the Council considers the total floorspace excessive and that some of the ancillary space is potentially convertible to living space. This argument is not wholly convincing, bearing in mind the nature of the operation at the Centre which is accredited by the British Horse Society and is working towards becoming an Approved Examination Centre. During my visit I saw the nature of accommodation provided in temporary facilities, including office space and storage requirements, which is clearly inadequate for the proper functioning of an establishment of this nature. From this evidence I consider an adequate case has been made for the additional space to be attached to the proposed house.
12. 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. The Council has suggested that Fir Tree House (the farmhouse for Town End Farm) could be available if Mr & Mrs Tate vacated it in favour of Mrs Brooks. This appears to ignore the fact that the two enterprises are separate and that the farm will continue to be run by Mr Tate until his eventual retirement. There is no justification in planning terms for requiring Mr & Mrs Tate to leave their house (HC/280 Keen -v- SSE & Aylesbury Vale DC). Nor has any evidence been provided to show how the house could accommodate both Mr & Mrs Tate and Mrs Brook's family.
13. Both parties have explored the availability of appropriate alternative accommodation. There are properties available for sale in Kirklevington which the Council considers would be appropriate on the basis that the village is only a few minutes' drive away from the Centre. However, for the nature and frequency of incidents described by the witnesses that would be unsatisfactory. It is implausible to consider that a person living in the village would be alerted to an emergency by any of the methods such as remote alarms, CCTV, or simply being able to hear a horse in distress and be able to respond in a reasonable time. For these reasons I have concluded an on-site presence is essential and that the operation can support the proposed dwelling in financial terms.
14. In arriving at my conclusion, I have noted that the appeal at Maltby (ref: APP/H0738/A/08/2081911) involves a significantly different operation in that the livery stables involved a relatively limited day-to-day role as the livery operated on a DIY basis with the care and welfare of the horses being primarily the owners' responsibility. I have also noted the appeal decision in respect of a dwelling for an equestrian establishment at Redmarshall, also in the Borough (ref: APP/H0738/A/09/2108209) and brought to my attention.
15. The final requirement is that other planning requirements are satisfied and these are addressed below.

Effect on the character and appearance of the area

16. The farm and stable complexes are located roughly south-east of Kirklevington in countryside that is generally flat and open in character. There is also relatively little in the way of tree cover in the immediate locality so that buildings tend to be visible over some distance. This is particularly the case with the existing farm complex, viewed from the A67 in the vicinity of the farm entrance. The indoor school and stables are also prominent in the middle foreground from the turning space at the end of Thirsk Road, on the edge of the village. However, further north, in the vicinity of the Crown Hotel, the tree cover and land form mask the buildings until close to the northern entrance to the farm.
17. The proposed dwelling would be located to the south-east of the indoor school and north-east of the existing stable block so that in the immediate vicinity it would be seen as part of the complex from most directions and would not be visible at all in longer views. As a result I do not consider it would be intrusive in the landscape I have described.
18. The building proposed would be of traditional vernacular design and materials, and would have a private garden space. As a consequence it would not be out of character with the surroundings I have described. It would not contravene the requirements of 'saved' Policy EN13 in the Stockton-on-Tees Local Plan dealing with development outside the limits to development, or relevant policies in the adopted Core Strategy.

Conclusion

19. In arriving at my decision I have had regard to the appeal decisions brought to my attention by both parties. However, the particular circumstances of these are not known to me and I have considered this appeal on its individual planning merits. The emerging National Planning Policy Framework is also a material consideration although it is in draft form so its weight in this appeal is limited. For all of the above reasons I consider the appeal should succeed.

Conditions

20. In the event of the appeal being allowed, the Council has suggested a list of 12 conditions that it considers appropriate. The appellant has offered no objection to any of these. However, they must be considered against the requirement for conditions to pass the six tests contained in Circular 11/95 and in particular should only be imposed if they are necessary, relevant to the development to be permitted, enforceable and reasonable in all other respects. Where possible model conditions have been used and I have amended wording where it is felt to be appropriate.
21. The first condition is a statutory requirement. Condition 2 is required since, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. In the interests of amenity Condition 3 is necessary in order to control the details of the proposed development. I have substituted model conditions for those (nos 5 & 6) suggested by the Council for landscaping works and omitted Condition 4, concerning the means of enclosure, since this is covered by the wording of the model condition for landscape works. Conditions 7 and 8 are necessary to

prevent light pollution and to ensure that the disposal of foul sewage does not result in pollution of the environment.

22. I have not been persuaded to include Condition 10 since no specific evidence was provided to suggest a reasonable expectation that land contamination will be encountered whilst carrying out the approved development. I have also not been persuaded that Condition 12 is necessary since it appears to me that any development under permitted development rights would be unlikely to significantly change the nature of the development such that it would have an unacceptable impact on the open countryside. I have, however, included Condition 11, limiting the occupation of the dwelling on the basis that the site is within an area where a new dwelling would otherwise not be permitted.

Patrick T Whitehead

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Steve Barker BSc (Hons) MRTPI DMS	Prism Planning
Ms Alison Baines	Prism Planning
Mr & Mrs Brooks	Appellant and husband
Ms Caroline Blakiston BSc BVM&S MRCVS	Oaklands Veterinary Centre
Ms Karen Moon	British Horse Society

Mrs E Tate

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Bishop MRTPI DipTP	Senior Planning Officer, Stockton-on-Tees Borough Council
Ms Elaine Atkinson	Planning Officer Stockton-on-Tees Borough Council
Ms Helen Turnbull	Planning Officer Stockton-on-Tees Borough Council

DOCUMENTS

- 1 Tate Family Tree
- 2 Documents showing the costs and funding for a new dwelling
- 3 Suggested conditions – negotiation document
- 4 Suggested conditions – final document

PLANS

- A Plan for proposed dwelling at Ryehills Equestrian Centre

PHOTOGRAPHS

- 1 Sheet of photos showing typical equine issues

ANNEX – CONDITIONS

- 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:

KRC/10/S1 21/06/2011

KRC/10/L1 Rev A 27/06/2011

KRC/10/P1 Rev A 27/06/2011

KRC/10/P2 Rev A 27/06/2011

KRC/10/P3 Rev A 27/06/2011

KRC/10/P4 Rev A 27/06/2011

- 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.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted begins and the building is occupied. Such lighting shall be shielded and aligned to avoid the spread of light in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Prior to commencement of development details of the proposed package treatment plant shall be submitted to and approved in writing by the local planning authority. The submitted details shall include disposal arrangements. Thereafter the house shall not be occupied until the package treatment plant has been fully provided and made available to serve the dwelling.
- 8) The dwelling shall be built to Lifetime Homes Standards and achieve a minimum of Level 3 of the Code for Sustainable Homes if commenced before 1 January 2013 and thereafter a minimum of Code Level 4 unless otherwise agreed in writing by the local planning authority.
- 9) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, at the equestrian enterprise known as Kirklevington Riding Centre, or a widow or widower of such a person, and to any resident dependants.

Costs Decision

Hearing held on 15 November 2011

Site visit made on 15 November 2011

by **P T Whitehead DipTP(Nott) MRTPI**

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

Decision date: 8 December 2011

**Costs application in relation to Appeal Ref: APP/H0738/A/11/2159569
Kirklevington Riding Centre, Town End Farm, Fieldhouse Lane,
Kirklevington, Yarm TS15 9PZ**

- 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 Mrs Jennifer Brooks for a full award of costs against Stockton-on-Tees Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of one dwelling house to support equestrian business at Kirklevington Riding Centre, Yarm.
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Decision

1. The application for an award of costs is refused.

Reasons

2. For the appellant, an application for an award of costs was prepared prior to the hearing. The Council was made aware of this and submitted a rebuttal at the hearing. The appellant claims the Council acted unreasonably for five stated reasons which I will deal with.
3. The first reason is that the Council should not have refused permission in the first place and so the appeal was unnecessary. However, although the Riding Centre is a business operating in the rural economy Annex A to PPS7 advises that *"it is essential that all applications for planning permission for new occupational dwellings in the countryside are scrutinised thoroughly with the aim of detecting abuse.."*. The Council was right, therefore, to give this application careful consideration and the officer's report prepared under delegated powers shows that the functional test was thoroughly applied. A fundamental issue in this appeal has been the business relationship between the Riding Centre and Town End Farm, and the manner in which this is changing on Mrs Tate's retirement. It is a matter of judgement whether this consideration has sufficient weight to support an additional dwelling and the fact that the Council's officer came to a different conclusion to this appeal decision reflects that balancing exercise. In this respect I believe the Council acted correctly.
4. The Council is criticised for failing to give weight to the emerging National Planning Policy Framework (NPPF) in determining the application and gave it only limited weight at the hearing. The officer's report makes clear reference to the draft NPPF on page 5 and is correct in continuing to give only limited

weight to a document in draft form. In any case, the NPPF (para 113) continues to state that special circumstances are required to justify an isolated home in the countryside.

5. The second reason is that the Council has not demonstrated that it has had practical regard to the views of expert evidence. The officer's report shows that the expert evidence has been considered and reasons given why the Council's officer took a different view. Para B16 of Circular 03/2009 indicates that the key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of *R -v- SSE ex parte North Norfolk DC 1994 [2 PLR 78]*. In my view the Council's evidence, both in its Statement, and orally at the hearing, did achieve this, even though it did not persuade me that the appeal should be dismissed. The courts have established that the evidence need not be of a technical or 'expert' nature to qualify as substantive.
6. The third and the final reasons both relate to advice in para B29 of the Circular – that like cases should be determined in a like manner. Whilst this is an important consideration, it is also necessary for the Council to treat each case on its individual planning merits. The cases put before the hearing, including the decision on appeal (ref: APP/H0738/A/09/2108209), concern dwellings related to equestrian enterprises, but each has particular circumstances the full details of which are not known to me. However, in this appeal the changing relationship between the equestrian business and the farm, and the different day-to-day management of the former resulting from Mrs Tate's retirement are distinguishing characteristics that do not appear to figure in those other cases.
7. The fourth reason is concerned with the introduction of new grounds of opposition to the proposal. The issue of highway safety was considered in the officer's report at application stage, when it was concluded that the proposal was acceptable in its impact on highway safety. Although the appeal statement made reference to highway safety the issue was not developed in the statement. References to affordable housing in paras 15 & 16 of the appeal statement appear to me to be setting out the policy implications of the proposal rather than addressing the reasons for refusal. The conclusion on the financial test was ambiguous in the officer's report at application stage, and the appeal statement attempts to address this. It appears to me that the Council did import some unnecessary material into its arguments at appeal stage in its efforts to defend the refusal. However, from the email correspondence it appears to me that these issues were reported to the Council prior to any substantial additional work being undertaken on behalf of the appellant and there was no consequent postponement of the hearing.
8. For all of the above reasons I do not consider the Council has, for the most part, acted unreasonably in this appeal. Where I have found that the importation of additional material was unnecessary, and to that extent, unreasonable, it did not involve the appellant in wasted time, effort or expenditure. I therefore find that unreasonable behaviour causing unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated.

Patrick T Whitehead

INSPECTOR