



Appeal Decision

by I Stevens BA (Hons) MCD MBA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 19/09/2024

Appeal reference: CAS-03080-T2Z6V6

Site address: Black Rock Farm, Sesswick Way, Cross Lanes, Wrexham, LL13 0SQ

- 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 outline planning permission.
 - The appeal is made by Mr N and Mrs K Elliott against the decision of Wrexham County Borough Council.
 - The application Ref P/2020/0011 is dated 2 December 2019.
 - The development proposed is a single dwelling for an agricultural worker.
 - A hearing was held on 20 August 2024.
 - A site visit was made on 21 August 2024.
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Decision

1. The appeal is dismissed and the application for a single dwelling for an agricultural worker is refused.

Procedural Matters

2. The planning application is made in outline with all matters reserved except for access. The proposed dwelling scale parameters are 8.5m x 11m in area, with 4.8m eaves height and 8.4m ridge height.
3. The appeal was made against non-determination of the planning application. The Council's Stance Report sets out reasons why they would have refused planning permission and is the basis for identifying the main issues for this appeal.
4. The Wrexham County Borough Local Development Plan 2013-2028 (LDP) was adopted on 20 December 2023, superseding the Unitary Development Plan which was in place at the time of the Appeal submission. The Stance Report references relevant LDP policies and I am satisfied that the appellants have been provided with the opportunity to identify and make representations on them.

Application for costs

5. An application for costs has been made by Mr N and Mrs K Elliott against Wrexham County Borough Council. This application is the subject of a separate Decision.

Background

6. Planning permission was granted on appeal in 2017 for the erection of 2 broiler chicken buildings including feed silos and photo voltaic panels, adjacent to the appeal site (Ref. APP/H6955/A/17/3167412). A temporary dwelling was granted as part of the appeal to enable the appellants to live on-site, and they confirmed that the mobile home has been in use since December 2018. Condition no.11 attached to the permission requires the caravan to be removed within 6 years of the date of first occupation. It is in this context that the current appeal for a permanent dwelling has been made.

Main Issues

7. The main issues are:
 - Whether there is an essential need for a dwelling to accommodate a rural enterprise worker; and
 - The effects of any additional phosphates on the integrity of the River Dee and Bala Lake Special Area of Conservation.

Reasons

Rural enterprise dwelling

8. The appeal site is part of a larger level field which is bounded by hedgerows and trees. The site lies south of the existing rural enterprise through a field gate, while there is established vehicular access from the yard onto Sesswick Way.
9. In planning policy terms, the site lies in open countryside. Policy H7 of the Wrexham LDP explains that one of the few instances where housing development proposals outside defined settlement limits may be supported is for the purposes of agriculture, forestry or other rural enterprise as defined in Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (July 2010). This approach is consistent with that of Planning Policy Wales Edition 12, February 2024 (PPW). Additional guidance on applying the principles of TAN 6 is contained in the Practice Guidance – Rural Enterprise Dwellings (December 2011).
10. Paragraph 4.4.1 of TAN 6 sets out 5 tests that new dwellings on established rural enterprises should satisfy, and it is against each of these tests that the proposal is assessed.

Functional Test

11. TAN 6 explains that the functional test is necessary to establish whether it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. It should relate to unexpected situations that might arise, for which workers are needed to be on hand outside of normal working hours for the enterprise.
12. The poultry enterprise has been operating since early 2019. The 2 broiler buildings house up to 41,000 chicks each. The rearing period can take up to 39 days to complete, during which the chickens are sent to a nearby processing plant. Contractors then come in to clean each poultry building before they are prepared for the next crop. Over the course of a year, around 7-7.5 crops of chickens are reared at the enterprise.
13. The appellants work and live at the appeal site. Mrs Elliott's father also works at the site, dividing his time between farm work and administrative tasks. The proposed dwelling would accommodate all 3 workers. When chickens are on-site, a work shift can range between 8 and 12 hours. A typical workday for the appellants begins around 7am with the first of 3 walks through both sheds. This involves checking the housing environment to

monitor and adjust the climate at various stages of the rearing process. The machinery, feed and water supplies are also checked, along with animal welfare in case of any illnesses, injuries, or fatalities to chickens. Deliveries of produce and other items to the site can vary according to the stages of the rearing cycle and require on-site presence to manage movements of people and goods in the interests of biosecurity and animal welfare. A final walk through the units is undertaken between 8-9pm each night during the rearing period.

14. Most of these activities appear to be routine tasks that take place during the workday. Some tasks take place overnight, such as when staff from the local processing plant come to collect chickens. The appellants are on hand to remove feed systems and monitor animal welfare, a process which can take several hours. However, these instances are typically known in advance and are not so frequent as to require sudden changes to work patterns.
15. At least one of the workers is always on hand during the rearing period to carry out these tasks and respond to unforeseen circumstances. Emergency interventions and repairs have included issues with computers and mechanical systems, animal welfare, and providing security to the poultry and site. It is these events which, the appellants contend, require a permanent dwelling at the enterprise.
16. Computer systems monitor conditions in each shed and are linked to the office in a separate adjacent unit. There is a high degree of automation from the temperature, lighting, food, water, and ventilation systems, with 8 different audible alarms that may be triggered at any time of the day. As alarms are unforeseen, the appellants explained that they need to be present to respond to any triggers. While faults with the computer and mechanical systems are said to require immediate remedial work, there is no firm evidence to suggest that reliability issues have or could have affected the continued existence of the enterprise in the absence of someone living on-site, particularly during overnight hours when the appellants do not typically carry out tasks and the chickens sleep.
17. Some of the faults referred to, such as blockages in the feeding systems or disintegration of auger bearings require manual repair. However, there is no substantive evidence of alarm logs or failure rates, including incidents which have happened outside of the normal working hours such that living off-site or requiring travel to and from the site would be impractical. While the appellants may periodically be awake during the night and enter the office to check sensors, on the evidence provided this appears to be a convenience rather than an essential scheduled activity.
18. I understand that both units require constant monitoring as chickens are sensitive to sudden changes in conditions. Performance data shows the enterprise compares very favourably with other suppliers. I also acknowledge that reliance on alarms and computer systems can only go so far, and that skilled stockpersons within close visual and aural range of the chickens provide the necessary attention to detail. Given that monitoring is largely undertaken during the working day and into the evening, the systems already cover nighttime hours. It is not inconceivable that those systems could be monitored remotely.
19. The appellants have invested substantial time and effort in the business, and I appreciate that they provide support for each other. While there may be personal preference not to rearrange work practices or to implement a rota system, the Practice Guidance is clear that a functional need is determined by the character and management requirements of the enterprise.

20. Anecdotal evidence was presented at the hearing of security risks to the enterprise, including theft of equipment in the early days prior to living on-site, and a more recent visit from an animal rights group. There is no substantive evidence before me detailing the nature of those incidents, or that enhancements to existing security and surveillance measures have been fully explored to minimise the risks identified. I can appreciate that the continued on-site presence of workers is in part a deterrent, providing additional surveillance and vigilance in the event of any further security threats. However, it does not on its own justify a permanent dwelling on functional grounds.
21. The previous appeal granted on-site accommodation, but this was on a temporary basis and as per the TAN 6 advice, it would allow a review of the enterprise's establishment and to assess the justification for a permanent dwelling.
22. While there may be benefits for the appellants living on-site, the evidence does not demonstrate an essential need for this permanent arrangement. As such, the functional needs test has not been met.

Time Test

23. Notwithstanding the above conclusions, for completeness I shall briefly consider the other TAN 6 tests. The next consideration is the number of workers required to meet needs, which in this instance must be for a full-time worker. The Practice Guidance adopts a standardised approach towards calculating labour requirements, based on the concept of an 8-hour day, or Standard Man Day (SMD), for labour demand.
24. The appellants have provided 2 calculations of labour demand for the poultry enterprise, based on standard data in the John Nix Farm Management Pocketbook. The 2 figures, 2.52 and 4.8 full time workers, can be attributed in part to the need for external staff to undertake the removal and transportation of chickens, and subsequent cleaning of both sheds. Irrespective of which calculation is used, the labour requirement in both scenarios exceeds two full time persons, and the Council accepts this. I am satisfied with the evidence underpinning the calculations and have no reason to disagree with them, based as they are on established methodologies. The time test has therefore been met.

Financial Test

25. To satisfy the financial test, TAN 6 advises the rural enterprise and activity concerned should be financially sound and should have good prospects of remaining economically sustainable for a reasonable period, usually at least 5 years.
26. Extracts from accounts have been provided for 5 years to 2024. Although the Council accepts the enterprise has been profitable during this time, their concerns centre on whether, and to what extent, wages have been drawn out by the workers.
27. Each set of accounts includes separate entries for Directors' remuneration, which is paid to the appellants. The most paid in a single year was £22,300 in 2024. Mrs Elliott's father takes drawings from the Directors' loan account. The Directors' remuneration does not appear to equate realistically to the skills of the individuals concerned. My assessments under the functional and time tests demonstrate the need for at least 2.52 full time staff, with the necessary stockperson skills to manage the enterprise and maintain animal welfare.
28. I understand the family are exercising financial restraint and are not taking out any more in remuneration than they feel is needed. That is a personal choice whereas the Practice Guidance advises that all labour required must be adequately remunerated either as a wage or a return, and labour costs must relate realistically to the skills of the individuals concerned. While I was told that annual profits are also available for the workers to take

as remuneration, it is not clear that the achieved profits have been constantly sufficient to provide a realistic wage for each workers' input, commensurate with their level of experience and stockperson skills. For example, profits in 2023 were lower than previous years and no Director remuneration was paid. There is no evidence of returns in comparable enterprises or the general economy, which is an essential aspect of the test.

29. I have no reason to doubt that the appellants have been meeting their repayments on the initial bank loan to develop the enterprise. There has been continued support from the bank, which includes the offer of an additional loan to cover the build costs of the proposed dwelling. The enterprise may have continued to service its debts and turn a profit in the face of increased energy costs and rising interest rates, but the accounts do not clearly show that the salary of a full-time agricultural worker has been paid during this time, and I have no substantive reasons to understand why this has been the case.
30. In terms of future prospects, I understand there are no plans to expand the enterprise, and it has performed above target margins which were set to meet bank funding requirements and Maelor Foods' own standards. I have no evidence before me of any intention from either the appellants or Maelor Foods to alter or end their current working agreement, which is subject to a 3-crop notice period if either party were to leave. I also understand that Maelor Foods intend to expand production at their local factory, of which the appeal enterprise would play a component part in the supply chain. The bank's loan agreements demonstrate confidence in the enterprise. However, the evidence of rising costs also raises concerns about the sensitivity of the business to external changes, with little detail on whether future forecasts could realistically accommodate reasonable wages, rising costs, and the additional bank loan to finance the dwelling.
31. In summary, although the business has been profitable for over 3 years and within the terms of its loan, it is unclear whether the remuneration levels realistically relate to the skills of the individuals involved. This includes the consequential impacts of rising costs and additional loans on enterprise profitability. I am not satisfied that the evidence provides a realistic picture of a return on resources used, and consequently, the financial test has not been satisfied in full.

Other Dwelling Test

32. I am satisfied that the on-site buildings are unavailable and unsuitable for residential conversion given their current uses. However, given the relative proximity of the enterprise to the villages of Cross Lanes and Marchwiell, and parts of Wrexham, there may be existing housing nearby that could enable close living and working arrangements. I have no evidence that other dwellings in the locality are available or financially feasible to meet the functional needs of the enterprise. While the appellants have a bank offer for an additional loan to finance building costs, there appears to be no reason why that loan could not go towards purchasing a dwelling in the locality. The Practice Guidance is also clear that evidence needs to show why there are no alternative options to new development on the land, such as a re-organisation of enterprise management. The other dwelling test has therefore not been met.

Other Planning Requirements Test

33. TAN 6 advises that rural enterprise dwellings should satisfy the usual planning requirements in terms of design, sustainability, and access. The Council raises no objection to the proposed siting and size of dwelling, subject to controlling scale via condition. This is necessary because the dwelling size should relate to the needs of the enterprise and could become affordable housing in the future based on the cascade mechanism in the standard TAN 6 occupancy condition. No highways objections have been raised to using the existing enterprise access. I am therefore satisfied that had the

other TAN 6 tests have all been demonstrated in this instance, the other planning requirements test would also have been met.

Other Cases and Conclusions on the Rural Enterprise Dwelling Tests

34. My attention has been drawn to 3 appeal decisions from England, all in the same local authority area. The appeals each relate to poultry units of a similar nature to the scheme before me. Whilst I recognise there are some functional similarities in terms of tasks, monitoring and animal welfare concerns, there are also differences in the management arrangements and details provided. Crucially, my conclusions on several matters, such as issues with the automated systems and audible alarms, and intervention in the event of emergencies, differ from those in the appeal decisions because of the evidence before me. The conclusions on financial and other dwelling tests also differ, based on the evidence provided. As such, my decision turns on the assessment of the specifics before me, in the context of relevant policy and guidance in Wales, and I afford limited weight to those decisions.
35. Drawing the above tests, I have found there is a need for more than 1 full-time worker to be present, and there is general compliance with the other planning requirements test. However, it has not been demonstrated that there is a functional need for those workers to be readily available at most times. The financial and other dwelling tests have also not been met. I therefore conclude that based on the specific circumstances of this case, the essential need for a dwelling to accommodate a rural enterprise worker has not been proven. Accordingly, the proposal is contrary to LDP Policy H7, and advice in PPW, TAN 6 and the accompanying Practice Guidance.

River Dee and Bala Lake Special Area of Conservation

36. The appeal site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). Natural Resources Wales (NRW) has set new phosphate standards for the riverine SACs, where evidence indicated a widespread or severe failure to meet revised water quality targets. Under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'), planning authorities must consider the phosphorous impact of proposed developments on water quality within SAC river catchments.
37. New housing development can lead to increased amounts of nutrients entering the river environment from additional wastewater. While there is an existing dwelling on-site, this is a temporary arrangement which would need to be removed as per the terms of the previous appeal decision. Notwithstanding the technical information provided, I therefore do not accept that there would be no increase in wastewater arising from the proposal.
38. The proposed dwelling would use a package treatment plant to dispose of foul sewage. Planning advice published on the NRW website (updated June 2024) advises that for private treatment systems, small discharges to ground (<2m³/day) via a suitable drainage field, built in accordance with criteria set out in the advice, should be prioritised over direct discharges to watercourses. This is because they are considered unlikely to have a pathway for nutrients to enter the river environment and are unlikely to have a significant effect on an SAC. While the proposed discharges in this scheme may fall below that threshold, this is still contingent on details being provided of the system, including scale plans of its location and discharge point. The NRW advice adds that for discharges to the ground, the results of infiltration testing should be provided to demonstrate that the drainage field size and design is appropriate for the volume of discharge proposed and follows the relevant British Standard. None of this information has been provided and it would be inappropriate to require details via planning condition,

given the uncertainty around demonstrating compliance with advice prior to the grant of permission.

39. There is insufficient information before me in terms of how the foul water flows would be treated by the package treatment system, to carry out a screening under the Habitat Regulations. In the absence of such information, and in adopting the precautionary principle, I am unable to conclude that there would be no adverse effect on the integrity of the SAC. The proposal would therefore conflict with the LDP Policies NE1 and NE6.

Other Matter

40. At the hearing, the Council agreed that a planning condition, similar to that included in the previous appeal decision, would secure the necessary mitigation measures for Great Crested Newts, such that a planning obligation was not necessary. Natural Resources Wales also confirmed they were satisfied with the approach and details provided. I see no reason to disagree and the proposal would satisfy nature conservation objectives both in the LDP and the step wise approach toward habitat protection and net biodiversity enhancement in PPW.

Conclusion

41. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.
42. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

I Stevens

INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

Document 1	Elliott (Agriculture) Limited, Annual report and unaudited financial statements, for the year ended 30 April 2024
Document 2	Letter from NatWest bank, 4 April 2024
Documents 3-5	Site plan IP/OF/KF/02, existing site plan IP/OF/KF/05, and Rural Enterprise Appraisal - Killinbgeck Farm
Documents 6-8	Site plan IP/OF/RH/02, existing site plan IP/OF/RH/05, and Rural Enterprise Appraisal – Red House Farm
Documents 9-11	Site plan IP/OF/BF/02, existing site plan IP/OF/BF/05, and Rural Enterprise Appraisal – Brecks Farm
Documents 12-14	Appeal Decisions Refs. APP/U2750/W/23/3324768, APP/U2750/W/23/3324769, and APP/U2750/W/23/3324770
Document 15	Copy of lease relating to land at Black Rock Farm, Cross Lanes, Wrexham, LL13 0SQ, dated 25 November 2021