



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 01/08/2024

Appeal reference: CAS-03222-K2N1H1

Site address: Torriad Farm, Bowling Bank, Wrexham LL13 9RT

- 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 Hoseley Farms against the decision of Wrexham County Borough Council.
 - The application Ref ISY P/2021/0729, dated 20 July 2021, was refused by notice dated 25 July 2023.
 - The development proposed is full planning for the erection of a rural enterprise dwelling on land at Torriad Farm and all associated works.
 - A site visit was made on 18 June 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made by Hoseley Farms (HF). However, it was confirmed during the Council's determination of the application that land forming part of the appeal site, Torriad Farm (TF), and the rural enterprise concerned, is in the private ownership of two of the four business partners. Although the application documents in relation to notification and certification of land ownership therefore contain errors, given that the landowners are partners in HF I do not consider that any party would be prejudiced by my considering the appeal.
3. The application was made on the basis of a new dwelling on an established enterprise (HF). As I understand from the appellants' submissions, whilst the business is trading as HF, it is a family business that operates from TF where a new dwelling is required to support the overall farming business. Nevertheless, the Council's Officer Report also makes reference to a new dwelling on a new rural enterprise (TF). The appellants' subsequent submissions argue that the proposal meets the requirements of section 4.4 of Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN 6) insofar as it would represent a new dwelling on an established rural enterprise, but if such an approach is not accepted, it could be considered as a new dwelling on a new enterprise under section 4.6 of TAN 6. I have therefore considered both propositions against the

tests set out in TAN 6 and its accompanying Practice Guidance 'Rural Enterprise Dwellings' (PG).

4. The appellants submitted additional accounts at a late stage in the appeal process. However, as these do not alter the substance of the appellants' case, I do not consider that any party has been prejudiced by my taking that information into account.
5. The Wrexham Local Development Plan (LDP) was adopted by the Council on the 20 December 2023, that is, after the Council's decision was made. The appeal must be determined in accordance with the current development plan unless material considerations indicate otherwise. However, given the main issues in this case, applicable LDP policies do not raise materially different matters to the former Unitary Development Plan (UDP) policies. Moreover, as the Council's reasons for refusal refer to both the former UDP policies and those of the LDP, the parties have had an opportunity to address LDP policies.

Main Issue

6. The main issue is whether the rural enterprise provides justification for the proposed dwelling having regard to local and national policy restricting new residential development in the countryside.

Reasons

7. The appeal site is located in open countryside to the east of the Wrexham Industrial Estate. The proposal is to construct a two-storey dwelling and detached garage in a field enclosure to the west of a complex of existing farm sheds which are used in association with a dairy enterprise.
8. The appellants' written submissions confirm that neither HF nor TF are new to the dairy industry; HF has been milking cows for over 50 years whilst TF has operated in the industry for some 20 years. HF acquired TF to expand its enterprise with the latter trading from May 2021.
9. Although Planning Policy Wales (Edition 12) (PPW) states that new house building and other new development in the open countryside should be strictly controlled, it recognises particular circumstances of housing need, such as when accommodation is required to enable rural enterprise workers to live at, or close to, their place of work which can only be met through the provision of individual dwellings in the countryside. Whether this need is essential in any particular case will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. LDP Policy H7 reflects PPW advice and permits housing development including for the purposes of agriculture as defined in TAN 6. TAN6 sets out different circumstances where rural enterprise dwellings may be acceptable, including on established farms and new enterprises.

Functional test

10. The appeal is predicated in the first instance on the need for a dwelling on the established HF enterprise. HF is stated to be a family business, with four operating partners. HF owns Hoseley Bank Farm and Yew Tree Farm and rents a dairy farm at Crewe Hall. The enterprise is based on dairy farming and also raises beef. The appellants state that Torriad Farm, at which a dairy business is operated, was recently added to the overall HF enterprise. In the absence of an existing dwelling on the Torriad Farm holding, the appeal dwelling is stated to be required to meet an existing and long-term future need to enable the ready presence of a worker at most times to ensure the

proper functioning of the additional dairy enterprise on the already established HF enterprise.

11. The functional test for a dwelling is primarily concerned with the management of risk within the operations of an enterprise such that, without the ready attention of a worker, any particular event or combination of events could lead to adverse animal welfare, crop or product quality, or health and safety consequences which might threaten the stability and economic well-being of an enterprise. In all cases, these would be circumstances which could not be properly managed within normal working hours.
12. One of the four HF partners, Andrew Jones, occupies Yew Tree Farm but is stated to work full-time running the dairy herd at Torriad Farm. Despite Yew Tree Farm's proximity to the additional enterprise, I acknowledge that there is some evidence of losses through reliance on electronic surveillance to alert him of necessary emergency interventions during calving at Torriad Farm. It is therefore intended that Andrew Jones would occupy a new dwelling at the appeal site to enable the efficient running of that additional enterprise. The appellants confirm that existing dwellings at Hoseley Bank Farm and Yew Tree Farm are occupied by the managers of those two enterprises. Whilst it is unclear whether Andrew Jones, as the current occupier of Yew Tree Farm therefore plays a hands-on role in managing the youngstock of the HF dairy herds which are housed there, the appellants state that the appeal proposal would allow that dwelling to become available to another manager, who would be required to reside on the site due to existing stock levels. However, no details are provided of all current workers in the HF enterprise, any active role taken by the partners or how existing stock across the whole of that enterprise, including the newly added TF branch of the business, is generally managed.
13. Moreover, the PG makes clear that the basis of rural housing policy is that every opportunity should be examined to avoid the creation of new residential development in the countryside and that planning authorities will need to be assured that the need for a new dwelling has not arisen from circumstances of poor business decisions. There is no evidence of how the acquisition of Torriad Farm as an addition to the HF business was planned in the knowledge that it was not served by a dwelling. Neither is there any evidence that the reasonable reorganisation of the overall management of the various herds comprising the HF enterprise has been considered, including such as where calving could take place, to ensure it occurs within sight and sound of an existing dwelling, such as Yew Tree Farm, where the intended occupier of the appeal proposal is already resident. Consequently, it has not been demonstrated that there is a functional need for an additional dwelling on an established holding.
14. Turning to the TF dairy operations, whilst the appellants argue that a profitable dairy enterprise was previously operated at Torriad Farm for some 20 years, that is not the enterprise for which a new dwelling is now sought. Nevertheless, although the herd number varies in the submitted evidence, there were numerous cows under the supervision of two workers present on the site at the time of my site visit, and it is clear from the evidence before me that it is a substantial enterprise with calving occurring year-round. The appellants state that the daily hands-on running of the business is undertaken by Andrew Jones, with its operations in terms of milking and feeding the herd being supported by two locally employed workers. Given the need for supervision and readily available assistance to the herd during calving, with reliance currently placed in part on CCTV having led to unsustainable losses and animal welfare concerns, and the employment costs related to night-time supervision also being unsustainable, the Council accepts that as a new enterprise not currently served by a dwelling, the proposal justifies the ready presence of a worker at most times if its proper functioning is not to be

prejudiced. In this context, the functional test for a new dwelling on an entirely new enterprise of the scale and operation set out at Torriad Farm would be met.

15. However, there is no cogent explanation why TF was established as a separate and stand-alone business from HF, and I will return to that matter later in my decision. Where the functional test for a dwelling on an existing rural enterprise (HF) is not met, it is not necessary for me to consider the remaining TAN 6 tests. However, on the premise that the functional test would be met for a new dwelling on a new enterprise (TF), I will go on to consider whether there is evidence of a firm intention and ability to develop the new enterprise, as well as the remaining financial, time and other dwelling tests set out in TAN 6.

Financial test

16. In this respect, the TAN seeks clear evidence that the new enterprise has been planned on a sound financial basis and should have good prospects of remaining sustainable for a reasonable period of time. It recognises that for new enterprises evidence of sound financial planning is required, which would normally be in the form of a business plan.
17. However, whilst financial documents and business plans have been provided, much of the submitted evidence for TF is conflated with HF accounts, meaning that separate performance is difficult to educe with any certainty. Stand-alone TF accounts are only available from 2022 to 2023. The details for the year ending March 2022 for TF show a relatively modest profit, with the turnover and profits increasing considerably by the year ending March 2023. The 2023 accounts also show a substantial increase in the value of tangible fixed assets against the previous year's accounts which could indicate continuing investment in establishing the enterprise, and I note that the partnership changed in early 2023, when the fourth partner of HF was appointed a director of TF shortly prior to publication of these accounts. However, there is no explanation of his involvement in the enterprise or whether the increase in tangible assets may be part of his investment. There is no explanation what additions have been made to land or buildings and an identifiable budget for investment in these items was not included in the business plan. In the absence of this substantial increase in the value of tangible assets however, the liabilities against assets could indicate a negative balance, which would appear, in the absence of evidence to the contrary, to signify that external support was necessary to sustain a profit.
18. Although the Council did not raise any issue in relation to the size of the proposed dwelling, there is little evidence that a dwelling of the intended scale is necessary to support the requirements of the enterprise. Moreover, whilst I note that the initial modest anticipated build costs were increased to a level more commensurate with its intended scale, and which the business plan projected could be met through a mortgage, I am not satisfied on the evidence before me that the enterprise currently has a reasonable prospect of providing a market return for its operators, including Mr Jones' management and manual labour inputs for whom the dwelling is being sought, as well as meeting mortgage costs, in the absence of external support.
19. Further, the Council's adopted Guidance Note No.2 'Agricultural Appraisals' (LPGN2) explains that the Council's assessment of such proposals will only be based on land in the applicant's ownership or land held on a permanent tenancy. Some of the land on which TF operates is confirmed to be secured on a long-term tenancy. However, the land described as 'owned' is, according to submitted Land Registry documentation, in the private ownership of two individuals who, whilst they are also partners in HF, have no association with TF. Whilst there are rental and 'back pay' payments to 'Hoseley' noted in the business plan, the submitted accounts do not provide a sufficiently detailed

breakdown of business costs to explain these payments and whether they relate to the third-party 'owned' land. Whilst it may be unlikely that a substantial investment in establishing the business would be made where there was no long-term certainty that the land on which it was based would remain available, no cogent evidence has been provided. Moreover, and in particular given the lack of ownership, without a suitable mechanism to ensure control of the land, such as through a unilateral undertaking, there is no certainty that the 'owned' land could be retained to meet the long-term business needs of TF on which the justification for the essential need for a dwelling is based.

20. I acknowledge that one of the Council's officers considers that the financial evidence submitted by the appellants shows the potential for a profitable business. Even so, the evidence before me suggests that this may be due, at least in part, to reliance on external financial sources meaning it is not possible to conclude that the business has a reasonable prospect of at least five years profitability. Moreover, the absence of any substantiated long-term control over the land raises considerable doubts about the enterprise's future operations. I am not therefore satisfied that the proposal meets the financial test.

Time test

21. The appellants' calculation of labour requirements for the enterprise comprising Torriad Farm, and taking into account all related activities, indicates that the standard labour requirement for that business would be 7 full time workers. As a separate enterprise, the labour requirement for a dairy enterprise at Torriad Farm is in excess of a full-time worker and I consider the time-test would therefore be met.

Other dwelling test

22. Consistent with my observations during my site visit, I concur that the agricultural buildings at the appeal site are modern farm buildings and appear to be fully utilised for the farm business and are therefore not available, nor suitable, for conversion. There is no evidence that any other dwellings are suitably located locally within the range of the build cost of the proposed dwelling which could reasonably serve the enterprise's needs. I consider therefore that the other dwelling test is met in relation to a new dwelling on a new enterprise.

Other planning requirements test

23. Rural enterprise dwellings should also satisfy the usual planning requirements in terms of design, sustainability and access. From the evidence before me, the proposal would be served by a suitable access and whilst acknowledging local support for the intended development, I saw that given the proposed dwelling's distance from other properties locally, it would be unlikely to affect the living conditions of neighbouring occupiers. In terms of ecological effects, I am satisfied that a suitable Amphibian Conservation Plan could be suitably governed by a planning condition. Although the appeal site is near to the River Dee and Bala Lake Special Area of Conservation (SAC) where additional phosphorus discharges, such as from foul drainage, could have unacceptable effects on that site's integrity, the proposal is supported by proposals, including a reed bed system, which would ensure that there would be no pathway for impacts. Natural Resources Wales (NRW) does not therefore object to the scheme, and I have no reason to conclude otherwise.
24. Nevertheless, TAN 6 advises that the siting of the proposed dwelling should relate closely to the activities for which there is a need. In most cases this will mean that the new dwelling should be sited in close proximity to existing buildings. LDP Policy DM1 says

that development proposals, where relevant, must accord with or enhance the character, local distinctiveness and appearance of the site, and surrounding landscape/ townscape in terms of their siting, layout, scale, height, design, density, use of materials and landscaping. Although it would be close to existing operational buildings and would not be in such an isolated position which could encourage farm fragmentation, the appeal scheme would be sited towards the middle of a large flat field enclosure and would appear removed from the farm complex. Although I saw that in most views, it would be seen in the context of existing buildings and that some tree planting has occurred around the field boundaries which are comprised of established hedges, and I recognise that additional landscaping could be undertaken, owing to its intended scale and height and intended position away from the complex of buildings at the farmstead, I consider it would be locally prominent and incongruous in its open field setting.

25. I acknowledge the presence of overhead wires, but these do not constrain all areas close to the farm buildings. I also note the appellants' assertion that the building has been sited away from the farm complex to allow for future expansion however there is no certainty that expansion would occur or what form it would take, or that it would best be located within the vacant area which would be created between the appeal proposal and existing sheds. I conclude that the proposal would therefore fail to meet the other planning requirements test and would not comply with LDP Policy DM1 or TAN 6 advice.
26. I recognise that business expansion can take many forms and that there may be, amongst other things, legitimate financial reasons, unrelated to land use considerations, for operating separate businesses and keeping assets separate. Nevertheless, the PG says that local authorities need to be assured that the need for a new dwelling has not arisen from attempts to manipulate the rural enterprise dwelling exceptions. Given the conflation of evidence, and the tangled arrangements of the TF partnership and landownership between various of the principals in both enterprises, and the lack of cogent reasoning for a separate enterprise, I am not satisfied on this matter.
27. Nevertheless, I have considered the appeal on the basis of the individual propositions as advanced. I conclude that it has not been demonstrated that there is a functional requirement in relation to the development of a new dwelling on an existing enterprise. Whilst I have found that many of the TAN 6 tests could be met in relation to a new dwelling on a new enterprise, I have found the proposal harmful in relation to one of those tests and there is insufficient information available to make a full and effective assessment of the proposal's long-term financial viability.
28. Accordingly, I conclude that it has not been demonstrated that the rural enterprise provides justification for the proposed dwelling having regard to local and national policy restricting new residential development in the countryside. It therefore fails to comply with LDP Policies H7 and DM1, and the advice contained within PPW, TAN 6 and the PG.

Conclusion

29. For the reasons given above and taking all other matters into account, I conclude that the appeal should be dismissed.
30. 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 Minister's wellbeing objectives as required by section 8 of the Act.

N Jones INSPECTOR