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## Appeal Decision

Site visit made on 15 August 2016

by **J Flack BA Solicitor**

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

Decision date: 22 August 2016

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**Appeal Ref: APP/W0530/W/16/3150794**

**Barn Farm, East Hatley, Sandy, Bedfordshire SG19 3JA**

- 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 Mr Christopher Hook against South Cambridgeshire District Council.
  - The application Ref S/0308/14/FL, is dated 9 January 2014.
  - The development proposed is erection of dwelling.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Christopher Hook against South Cambridgeshire District Council. This application is the subject of a separate Decision.

### Main Issue

The main issue is whether or not there are any circumstances justifying the proposed dwelling as an exception to local and national policies that generally seek to restrict development in the countryside.

### Reasons

#### *Preliminary observations*

3. The appellant has set out in some detail the history of the Council's administration of the application and why he considers that it has been unsatisfactory. I note his concerns, and they are of relevance to my consideration of his application for costs which accompanied the appeal. However, it is important to record that assessment of a planning appeal is limited to consideration of the planning merits of the proposed development.
4. Moreover, the appeal is following the written representations procedure, as both parties have requested. It follows that my assessment is of the evidence which the parties have chosen to place before me in support of their cases. I have been provided with two reports by Acorus Rural Property Services Ltd, the first dated June 2014 and the second dated June 2016. These were commissioned by the Council and I shall refer to them as the first and second Acorus reports. However, although it appears that the appellant provided the

Council with an appraisal of the need and justification for a dwelling and various business accounts, these documents are not before me.

*Site and planning policy context*

5. East Hatley is a very small settlement, consisting principally of a modest number of dwellings set along both sides of a single road. As this approaches its cul de sac end, development becomes much more sporadic. The immediate vicinity of the appeal site has a very rural character and a remote feel, marking the transition between the residential development and the expansive open countryside which begins a little distance beyond the site.
6. The Council refers to Policy DP/7 of the Development Control Policies<sup>1</sup>. This provides that outside village frameworks only development for agriculture and other uses which need to be located in the countryside will be permitted. The appellant refers to planning permissions for dwellings in the vicinity of the site which are outside the framework for East Hatley, but I have no information as to their circumstances, and there is no evidence which demonstrates that the framework has been redrawn so as to include the appeal site. Policy HG/9 provides that new permanent dwellings for agricultural or forestry purposes, or for a rural-based enterprise, will only be permitted where various criteria are met. These focus on agricultural enterprises, although paragraph 4 of the Policy provides for their application to dwellings connected to the keeping of horses where the scale of the business meet the tests of a rural enterprise. There is no suggestion that an existing dwelling has been sold off or separated, and according criterion e. is satisfied. Moreover, the terms of the Policy are such that a temporary dwelling may be permitted if all the criteria except b. are met, and I understand that the Council granted such a permission in 2010. However, this was several years ago, and is not indicative that criteria a., c., and d. would necessarily still be met.
7. Paragraph 55 of the National Planning Policy Framework is also of relevance to the proposal. The focus of this is on ensuring that rural housing is located where it will enhance or maintain the vitality of rural communities. There is no evidence before me of any services or facilities in the vicinity of the site which the proposed dwelling would support and be served by. Given also the rural character of the site's setting, I consider that although the proposed dwelling would be close to existing dwellings, it would nevertheless be a new isolated home in the countryside. Paragraph 55 states that local planning authorities should avoid such homes unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.
8. The Acorus reports and Policy HG/9 reference previous Government policy set out in Planning Policy Statement 7. This has been superseded by the Framework, and paragraph 55 does not define "essential need", nor specify any criteria by which it is to be assessed. However, this is a very demanding test. Any assessment of whether essential need exists will thus require a structured approach which takes all relevant considerations into account. For that reason, considerations of functional need and financial viability, although originating in PPS7, are of ongoing relevance, as is the question of whether alternatives exist. Moreover, the evidence before me is not indicative of any substantial

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<sup>1</sup> Development Control Policies DPD, adopted July 2007

conflict between the Framework and the provisions of Policies DP/7 and HG/9 in the context of the present appeal proposal.

*Need for the dwelling*

9. The appellant's land consists principally of a holding of 7.5 acres on the east side of the road. The appellant's caravan is located here, along with a number of agricultural buildings of various sizes. There is smaller holding of land and buildings on the opposite side of the road, amounting to 2.75 acres. The appellant has provided very little detailed information about the nature of the enterprise he operates. At the time of my visit, the principal enterprise appeared to be the keeping of chickens at various locations within the two holdings. I also saw a number of horses, most of which were stabled. Pigs, goats and geese are also kept, apparently in quite small numbers, and I also saw a small flock of sheep and a single alpaca.
10. The first Acorus report concluded that there would be a functional need for a dwelling if the business expanded as proposed. The second report concludes that there is a functional need for the dwelling assuming that stocking levels have remained unaltered since the first report, a matter which the report author was unable to assess as he had not carried out a site visit. I have done so, but I have no clear information as to what the stocking levels were at the time of the first report. Moreover, although clearly levels will fluctuate as stock is acquired and sold, the evidence before me does not demonstrate clearly whether stock levels have, overall, remained constant. Some of the animal-rearing activities on the site are such as might well give rise to a need for a worker to be readily on hand. However, on the very limited evidence before me, I cannot be fully satisfied that the nature and scale of the activities comprised in the present enterprise continue to be such as to require a worker to live permanently at or near the site, or that criterion a. of Policy HG/9 is met.
11. However, even if such a functional need existed, in the context of a permanent dwelling it would still be necessary to examine whether that need was likely to persist into the future. A key consideration here is the financial robustness and viability of the business. This must be adequately demonstrated, in order to show that the justification for a permanent dwelling as an exception to planning policies is reasonably likely to endure. What needs to be shown is not merely that the enterprise is profitable, but that the profit is sufficient to fund a worker and the proposed dwelling and also that it is sustainable. That is reflected in criterion b. of Policy HG/9, which requires not only that the unit be established for three years and profitable in at least one of them, but also that it is financially sound and has a clear prospect of remaining so.
12. Profit amounts for various years are stated in the Acorus reports, but whilst the first report states that there was no reason why the profits could not expand further, this was from a very low profit base of £13,348 for 2013. The second report mentions profit in 2014 of £28,225, rising to £37,498 in 2015, and the report concluded that a profit of the latter amount would be sufficient to fund a worker and a dwelling. However, I have not been provided with the accounts, and so do not know whether they are formal audited accounts and what detail they provide. I note, however, that according to the second report, the latest accounts did not provide a breakdown of income from the various enterprises to show the derivation of the additional profit. At appeal, the appellant has not challenged this. Moreover, the second report states that no further information

was provided with the accounts to explain exactly how the increase has occurred, and the appellant has not provided any substantive evidence in answer to this.

13. In my view these are serious deficiencies. Whilst I have no reason to suppose that the business was not capable of some development, it is nevertheless a very modest enterprise undertaken on a limited holding, and the second Acorus report notes that due to the high stocking levels even in 2014 it would have been difficult to increase levels. Accordingly, such a substantial stated increase in profits requires a clear and reasoned explanation, but none is provided by the evidence before me. I am therefore not satisfied by the evidence before me that the sustainable and enduring financial viability demanded by the planning policies has been demonstrated.
14. A further consideration relevant to determining whether there is an essential need for the purposes of paragraph 55 is whether there are realistic alternatives to the proposed dwelling. Criteria c. and d. of Policy HG/9 require that there are no suitable buildings available in the area, and that the conversion of appropriate nearby buildings would not provide suitable accommodation.
15. The representations of some interested parties assert that various properties in East Hatley have been for sale during the time that the appellant's enterprise has been in operation. The appellant accepts that properties in the road have been sold, but that none have been suitable as they were too far away from the holding to allow for effective monitoring and care of livestock. However, I do not have sufficient information about the nature of the livestock enterprises to be sure of this, and I saw on my visit that a sale board was displayed at a dwelling very close to the principal farm buildings. As to conversion of nearby buildings, my observations and the evidence before me are not suggestive that suitable buildings exist outside the appellant's holding. As to the buildings within it, an important factor is whether they are required for current livestock enterprises or their future expansion. However, the only reason the appellant gives as to why conversion of existing buildings would not be feasible is that planning permission was refused for a conversion of one of the buildings on the grounds of harm to character and appearance of the countryside, and I have no information as to the policy context or other planning circumstances. I am therefore not fully convinced by the evidence before me that there are no realistic alternatives to the appeal proposal.
16. Drawing all the above matters together, I acknowledge the appellant's evident commitment to the enterprise, which has been in operation for several years. However, the evidence before me as to the enterprise's operations and their financial position is very limited, and it has not been sufficiently demonstrated that the proposed enterprise would have a reasonable prospect of financial viability and success sufficient to justify the proposed permanent dwelling. Nor can I be sufficiently certain that a functional need exists for the dwelling or that no realistic alternatives exist.
17. I therefore conclude overall, on the evidence which is before me at appeal, that the circumstances of the proposal are not such as to justify the proposed dwelling as an exception to local and national policies that generally seek to restrict development in the countryside. The proposal would be contrary to Policies DP/7 and HG/9 of the Development Control Policies and paragraph 55 of the Framework.

*Other matters*

18. I have noted that the Council does not raise objection to the size or siting of the proposed dwelling, but these matters do not mitigate or overcome my conclusions on the main issue. An executed planning obligation date 29 May 2014 is before me, which would provide for the payment of public open space and community space contributions if planning permission were granted for the proposal. However, I understand that the policy requirement which the obligation addressed no longer applies. The obligation is thus not necessary to make the development acceptable in planning terms, and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 provides that such an obligation cannot constitute a reason for granting planning permission.

*Conclusion*

19. Neither the matters discussed in the previous paragraph, nor any other matter raised in the evidence before me, disturbs or outweighs my conclusions on the main issue. The appeal is therefore dismissed.

*J Flack*

INSPECTOR