



Appeal Decision

Hearing (Virtual) Held on 22 June 2021

Site Visit made on 23 June 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/G2815/W/21/3267380

Ranger Pigs, Elton Road, Fotheringhay PE8 5JD

- 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 Mr Robert Dean, Ranger Pigs, against the decision of East Northamptonshire District Council.
 - The application Ref: 19/01860/FUL, dated 21 November 2019, was refused by notice dated 21 July 2020.
 - The development proposed is described as 'retrospective application for permission to retain a single residential dwelling in support of the operation of a free range pig farm (personal permission).'
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single residential dwelling in support of the operation of a free range pig farm, at Ranger Pigs, Elton Road, Fotheringhay PE8 5JD, in accordance with the terms of the application, Ref: 19/01860/FUL, dated 21 November 2019, subject to the following conditions:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the dwelling hereby permitted shall not be extended beyond its form identified on the submitted plans: Location Plan 1:2500; Site Plan 1:500 Ref: RP2; and Ranger Homes elevation and roof plan Ref: RP1.
 - 2) The dwelling hereby permitted shall endure for the benefit of Mr Robert Dean (the applicant) only and not for the benefit of the land or any other person or persons for the time being having an interest therein. When the dwelling ceases to be occupied by the person named above the use hereby permitted shall cease and within 3 months the dwelling shall be removed, and the land returned in full to agricultural use.
 - 3) Unless within 3 months of the date of this decision the detail of the colour the dwelling is to be painted is submitted in writing to the local planning authority for approval, and unless the dwelling is painted within 9 months of the local planning authority's approval in accordance with the approved colour detail, the occupation of the dwelling hereby permitted shall cease until such time as the colour detail has been approved and implemented.

Upon the dwelling being painted as specified in this condition the dwelling shall thereafter be retained in the approved colour. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure

set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the hearing was closed. Both main parties have been given the opportunity to comment on the implications of this for the appeal. I have had regard to the responses received in my determination of the appeal and my decision is made in the context of the revised Framework. I am satisfied that no parties' interests have been prejudiced by this approach.
3. On 1 April 2021 East Northamptonshire District Council merged with other Local Planning Authorities in Northamptonshire to become the new unitary authority of North Northamptonshire Council. The Council confirmed at the Hearing that, following the merger, there is no change to the status of the North Northamptonshire Joint Core Strategy 2011-2031, adopted 2016 (the JCS). I have therefore determined the appeal having regard to the relevant policies within the JCS.
4. The Council's appeal statement makes reference to Policy EN5 of the emerging East Northamptonshire Local Plan Part 2 2011-2031 (the emerging LP Part 2), which was submitted for examination in March 2021. The parties agreed at the Hearing that, as the emerging LP Part 2 has not yet been formally adopted, its policies can be given only little weight. I have no reason to disagree and determined the appeal on that basis.
5. The appellant's statement of case refers to Policy 1 of the Rural North, Oundle and Thrapston Plan, 2011 (the RNOT Plan). The Council confirmed at the Hearing that the RNOT Plan was superseded in 2016 and is no longer in force. Therefore, I have not taken this policy into account in my determination of the appeal.
6. Notwithstanding the description of development as set out in the banner heading above which is taken from the planning application form, in the interest of clarity I have omitted words which are not acts of development from the description in my formal decision. This was agreed by the parties at the Hearing.
7. I observed on site that the development has already been carried out. I have therefore determined the appeal on that basis, having regard to the plans submitted with the application.
8. Both parties agree that the development is unauthorised. The submission of the application was in response to the receipt of a Planning Contravention Notice issued by the Council¹. For the avoidance of doubt, I have not considered this matter as part of this appeal under section 78 of the Act.

¹ Enforcement Case reference: 19/00133/PPD.

Main Issues

9. The main issues are:

- Whether there is an essential need for a rural worker to live permanently on the site; and,
- The effect of the development on the character and appearance of the area and surrounding countryside.

Reasons

Background

10. The appeal site (the site), known as 'Ranger Pigs', is a modest, rectangular parcel of agricultural land located just off Elton Road, approximately 2.1km outside of the village of Elton. The land is in use by the appellant for the free-range rearing of about 40 pigs and 25 chickens.
11. A structure, formed from the joining of two shipping containers (the container), is placed in the site. The container has been modified with the insertion of windows and doors and adapted internally to provide living, sleeping and bathroom facilities. It is in use by the appellant as a dwelling from which to manage the land and his animals.
12. The appellant has managed the site since late 2000 when he started Ranger Pigs as a hobby farming business. Between 2000-2015 he ran the site remotely, living in privately rented accommodation in Elton at a reduced rental rate. In August 2015, after having to vacate his rented home and being unable to find suitable and affordable accommodation nearby, the appellant moved into a caravan on the site. At some point between 2015 and March 2018 the containers were moved onto the site and converted into residential accommodation for the appellant to live in.
13. The appeal scheme seeks planning permission for the sole occupation and use of the container as a dwelling by the appellant.

Essential need

14. It is common ground between the parties that, for the purposes of planning policy, the container is located beyond any defined settlement boundaries, within the open countryside and in an isolated location.
15. Policies 11 and 13 of the JCS are considered by the parties to be the most relevant to this main issue of the appeal and I agree. Policy 11 sets out a spatial strategy for development within urban and rural areas within North Northamptonshire and Policy 13 outlines exceptions to the spatial strategy in rural areas.
16. Directly relevant to the appeal, section 2 of Policy 13 states, 'In open countryside, away from established settlements, permission will not normally be granted for new built residential development, with the exception of:
b) Dwellings for rural workers at or near their place of work in the countryside, provided that: i. The dwelling is required to enable someone who is in full time employment in agricultural, forestry or similar rural businesses to meet the essential need of the enterprise concerned; and ii. It can be demonstrated the functional, financial and viability tests in paragraph 5.41 have been met.'

17. Policy 13 reflects Paragraph 80 of the Framework, which states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of certain stated circumstances apply. This includes Paragraph 80(a) – there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
18. There is a degree of functional need for the appellant to be on site in terms of animal welfare. However, the modest numbers of livestock means that any activity on site is of a very low level. A functional need to maintain the security of the site and animals is also evident. However, no robust evidence has been submitted which confirms that alternative options beyond CCTV, which has been used previously but proved to be too costly, would not provide an adequate level of on-site security. I am also mindful that the site was managed remotely between 2000-2015.
19. Furthermore, whilst no formal financial accounts have been submitted, the written and oral evidence provided confirms that any net profit generated by the enterprise is modest and varies from month to month. As such, the business is not financially sound.
20. I therefore concur with the findings of the Agricultural Consultant's Report² and the parties, that the appellant is unable to satisfactorily meet the specific functional, financial and viability tests set out in Policy 13 of the JCS in order for an isolated rural workers' dwelling to be acceptable. On this basis, an essential need for the appellant to live permanently on the site has not been demonstrated and the development is not policy compliant.
21. There is no guidance in the Framework as to what constitutes 'essential need'. I note the court judgement and appeal decision submitted by the appellant which highlight that the test in the Framework simply requires a judgement of whether the proposed agricultural enterprise has an essential need for a worker to be there or near there; it does not require that proposals are economically viable³.
22. Nevertheless, the development plan has primacy and is the starting point for decision making. Although the JCS predates the revised Framework, Policy 13 is consistent with Paragraph 80(a). It provides a local interpretation of national policy and incorporates well established tests to determine 'essential need'. The requirements of Policy 13 also largely reflect the Planning Practice Guidance (the PPG) in relation to how the need for isolated homes in the countryside for essential rural workers can be assessed⁴. On this basis, the court judgement and appeal decision do not alter my conclusion.
23. Having regard to Paragraph 105 of the Framework concerning the location of 'significant development' and the difference between urban and rural areas, I acknowledge that the development is very modest in scale and the enterprise can reasonably only be carried out in a rural area. Nevertheless, the Framework is clear in not supporting isolated homes in the countryside which the dwelling is because of its remote location, separation from services and facilities and a reliance on the private car.

² Report by Reading Agricultural Consultants commissioned by the Council Ref: 8861. Dated 7 July 2020.

³ Embleton PC and David Ainsley v Northumberland CC and Ivor Gaston [2013] EWHC 3631 and Appeal Decision Ref: APP/Y3940/W/17/3192248 (12 September 2018) Magdalen Farm, Rowden Lane, Bradford on Avon, Wiltshire, BA15 2AB.

⁴ Planning Practice Guidance: Paragraph: 010 Reference ID: 67-010-20190722.

24. Accordingly, I conclude that there is not an essential need for a rural worker to live permanently on the site. This conflicts with Policies 1, 11 and 13(2)(b)(i) and (ii) of the JCS in so far as they seek to attain sustainable patterns of development. It also does not comply with Paragraphs 79 and 80 of the Framework regarding the location of rural housing.

Character and appearance

25. The land surrounding the site is not subject to any landscape designations. Its character and appearance is eminently rural, comprising a generally flat and open expanse of agricultural fields which are interspersed by the River Nene, field boundaries, wooded areas, individual farmsteads and small settlements. The site itself is agrarian in form and nature, enclosed by a combination of post and rail fences, mature hedgerows and trees.
26. The container is fairly modest in size, being approximately 12.1m in length, 4.9m in width and 3.7m in height, and is positioned approximately 50m back from Elton Road. Other structures on the site include shelters for the animals. Prior to the installation of the existing container another shipping container was present on the site for the storage of equipment and materials. Throughout the site there is a variety of supplies and equipment present which appear to have accumulated as part of the operation of the enterprise.
27. The form, design and materials of the container are in no way akin to the traditional dwellings located within the surrounding area. Even though the container may be an example of eco-friendly development and low-cost living, its design is unquestionably basic and stark when assessed as a residential property. Nevertheless, having regard to the other structures which have been, or are currently, on the site, the container is not markedly at odds with them or what might reasonably be found on an agricultural holding.
28. The container's modest dimensions, set back position in relation to the highway, low lying form and plain design result in a structure which is not overtly prominent within the landscape. The screening afforded by the existing boundary vegetation further mitigates its presence, with the only clear and direct views of the container being gained from Elton Road when passing the entrance to the site. Consequently, whilst acknowledging the deficiencies of the container's form, design and materials as a dwelling, of itself, it does not detrimentally harm the open and rural character and appearance of the surrounding landscape. Moreover, the imposition of a condition which would remove permitted development rights to extend the container, as suggested within the agreed Statement of Common Ground (the SoCG), would ensure that this remained the case.
29. The windows facing Elton Road, external flue and small wind turbine provide some indication of the domestic occupation of the container. However, this residential use is by no means immediately obvious when viewed from outside the site. The modification of the container which can be seen from public routes is minimal. Moreover, the paraphernalia around the container and present in the rest of the site is, first and foremost, linked with the agricultural use of the land and not the domestic use of the container. As such, the container's adaptation and use as a dwelling does not have an adverse effect on the agricultural character and appearance of the site or the area and, from the submitted written and oral evidence, I have no reason to envisage that this situation would change in the future.

30. The light grey colour of the container causes it to be more noticeable compared to the other structures on the site when viewed from Elton Road. It is reasonable to conclude that its prominence within the landscape would increase during the autumn and winter months when the leaf cover of the boundary screening would be reduced. However, it was discussed and agreed by the parties at the Hearing that a condition could be imposed requiring the container to be painted an appropriate colour as agreed with the Council. This would additionally lessen the container's visual impact and go some way in helping it to assimilate into the landscape.
31. Drawing the above together I conclude that, subject to the imposition of conditions, the development would not have a harmful effect on the character and appearance of the area and surrounding countryside. As such, it would not conflict with Policies 3 and 8 of the JCS. Together, these policies require development to conserve and, where possible, enhance the character and distinctive qualities of the local landscape. It would also comply with Paragraphs 130, 134 and 174 of the Framework in so far as they require development to be sympathetic to local character.

Planning Balance

32. I find there is not an essential need for a rural worker to live permanently on the site. Consequently, the proposal causes harm in terms of achieving sustainable patterns of development and conflicts with the development plan and the Framework. I give this harm and conflict substantial weight against the appeal.
33. I have also concluded that the development would not have a harmful effect on the character and appearance of the area and surrounding countryside. Nonetheless, a lack of harm in this regard is a neutral consideration and weighs neither for nor against the appeal.
34. It is common ground between the parties that personal circumstances are capable of being material considerations in planning cases, as confirmed by case law⁵, especially when a grant of planning permission can be tied to a specific individual and not the use of land. In this respect, I have had regard to the condition included within the SoCG tying the development to the appellant.
35. The appellant contends that his personal circumstances are material considerations which outweigh the identified conflict with the development plan. Conversely, the Council considers that they do not provide adequate justification in these regards.
36. I am mindful that the appellant is over 70 years old; has worked on the site since 2000 and lived on the site since 2015; and subsists on a state pension along with any income from the Ranger Pigs enterprise which is modest and variable. As presented at the Hearing, his occupation of the land and management of the animals is very much an established way of life which he does not want to change.
37. I note the Council's comment that the matter of housing is a regulatory issue separate to the planning system and it is apparent that the appellant himself has not actively sought to enquire about or investigate alternative accommodation options available to him. Nevertheless, I am not persuaded

⁵ Great Portland Estates Plc v The City Of Westminster [1984] UKHL 10 (31 October 1984).

- that these matters should count against the appellant. The evidence presented during the Hearing demonstrated the lack or very limited availability of alternative accommodation which would meet the appellant's personal requirements and financial constraints, as well as allow him to continue to manage Ranger Pigs. This is either with family members, in the private rental sector⁶ or via Keyways, the Council body which manages housing need.
38. Furthermore, although the Council would have a legal duty to rehouse the appellant within 56 days of him being made homeless, it was confirmed at the Hearing that, initially, it is likely that any alternative accommodation would be temporary and not local to the site.
39. These circumstances are very specific to the appellant and the case and are a matter to which I afford significant weight in favour of the appeal.
40. Notwithstanding the unauthorised and rudimentary nature of the container, I am satisfied that it can reasonably be regarded as the appellant's home. Given that the appeal decision could lead to the loss of the appellant's home, I have had regard to the rights conveyed under Article 8, and Article 1 of the First Protocol, of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 (Article 8 and Article 1 of the First Protocol).
41. Article 8 is the right to respect for private and family life, home and correspondence and Article 1 of the First Protocol is the right to the peaceful enjoyment of possessions including property. These qualified rights must be weighed against other factors, including the wider public interest and legitimate interests of other individuals. Interference in these qualified rights may be justified in the public interest, in this case planning policies which seek to promote sustainable patterns of development. However, the concept of proportionality is crucial.
42. Given the circumstances of the case, I have also had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010 (PSED). Section 149 specifies the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic (which includes age) and people who do not share it.
43. The negative impacts of dismissing the appeal would be that the appellant would lose his home, his livelihood and his chosen lifestyle. This would represent a serious interference with his rights under Article 8 and Article 1 of the First Protocol and have equality implications under PSED. Nonetheless, the interference would be in accordance with the law and in pursuance of well-established and legitimate planning policy aims in terms of the promotion and attainment of sustainable patterns of development.
44. Planning permission usually runs with the land and it is rarely appropriate to provide otherwise⁷. However, given the individual circumstances of the appellant, I find that exceptionally in this instance, a grant of a personal planning permission would be proportionate and necessary. It would allow the container to be removed and the land within the site to be restored in full to its agricultural nature at the end of the permission, whilst avoiding a violation of the appellant's rights under Article 8 and Article 1 of the First Protocol and any

⁶ Local Housing Private Rental Opportunities. Document Ref: SJRPH 01. Prepared by Smith Jenkins Ltd.

⁷ Planning Practice Guidance. Paragraph: 015 Reference ID: 21a-015-20140306.

equality implications under the PSED. The protection of the public interest cannot be achieved by means that are less interfering of the appellant's rights.

Conditions

45. I have had regard to the conditions listed within the agreed SoCG which were discussed at the Hearing and considered them in light of the advice set out in both the Framework and the PPG.
46. As the development has been erected and its use as a dwelling is ongoing, the standard commencement and specification of relevant plans/drawings conditions are not necessary.
47. In the interests of preserving the character and appearance of the area and surrounding countryside, a condition removing permitted development rights regarding the extension of the dwelling is necessary and reasonable.
48. The development that would not normally be permitted is justified on planning grounds because of the benefits that would be gained by the appellant from the permission. Therefore, a condition strictly limiting the permission to the applicant and requiring the dwelling to be removed with the land returned in full to agricultural use within a specified timescale is necessary. The condition will ensure that the development can be enforced against if the requirements are not met.
49. A condition is imposed to ensure that the colour detail that the dwelling is to be painted is submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the painting of the dwelling before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

50. Having regard to the rights conveyed under Article 8 and Article 1 of the First Protocol, in conjunction with the PSED, I am satisfied that the personal circumstances of the appellant are material considerations, which indicate that, exceptionally in this case, the appeal decision should be made other than in accordance with the development plan.
51. Therefore, for the reasons given above and subject to conditions, I conclude that the appeal should be allowed.

F Cullen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Oliver Dean	Appellant's Son
Ms Jennifer Smith, MRTPI	Smith Jenkins Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Patrick Reid	Senior Development Management Officer
Mr Mike Burton	Principal Planning Policy Officer
Ms Louise Morcom	Agricultural Consultant, Reading Agricultural
Ms Martina Robinson	Planning Administration Assistant

DOCUMENTS SUBMITTED AT THE HEARING BY THE APPELLANT

Local Housing Private Rental Opportunities. Document Ref: SJRPH 01. Prepared by Smith Jenkins Ltd.

Great Portland Estates Plc v The City Of Westminster [1984] UKHL 10 (31 October 1984).