



## Appeal Decision

Hearing held on 21 February 2024

Site visit made on 21 February 2024

**by H Jones BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 March 2024**

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**Appeal Ref: APP/J1915/W/23/3327490**

**The Piggeries, Benington Road, Walkern, Hertfordshire SG2 7HX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr M Kirbyshire against the decision of East Hertfordshire District Council.
  - The application Ref is 3/22/2635/FUL.
  - The development proposed is the erection of a rural worker's dwelling to replace existing mobile home.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The Council and the appellant have been given the opportunity to comment on the revised Framework. I have had regard to the revised Framework in my decision.

### Main Issues

3. The main issues are:
  - whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
  - the effect of the development on the openness of the Green Belt; and
  - if the development is inappropriate development in the Green Belt, whether the harm, by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### Reasons

*Whether the development would be inappropriate development in the Green Belt*

4. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The Framework identifies that the construction of a new building in the Green Belt should be regarded as inappropriate, unless it would constitute one of the

exceptions set out in paragraph 154. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are listed at paragraph 155. The Framework goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy GBR1 of the East Herts District Plan 2018 (LP), states that proposals within the Green Belt should be considered in line with the Framework.

5. At the hearing, both parties confirmed that the development would amount to inappropriate development in the Green Belt. I have no reason to disagree with that position.

*The effect of the development on the openness of the Green Belt*

6. The appeal site is situated within the countryside to the east of Stevenage and to the south of Walkern. It is adjacent to and accessed from Benington Road. The site contains various agricultural buildings, areas of hardstanding, a mobile home and a field. The mobile home has a garden area beside it which is enclosed by a low fence and which contains a shed, amongst other items. There are trees, hedgerows and other means of enclosure within the site and to its edges.
7. The proposed dwelling would be set back from Benington Road, sited on a parcel of land which forms a part of the field within the site. This parcel of land is separated from the other parts of the field by metal barriers. Unlike much of the rest of the field, this parcel of land presently has very little grass cover. It also contains a large mound of stones. With accommodation set across 2 floors including 3 bedrooms, a study, a family and dining room and a separate lounge, the proposed dwelling would be a building of quite significant size. This would be the case even though the dwelling proposed now is smaller than that proposed within a previous planning application<sup>1</sup>. Upon completion of the proposal, built development would be introduced onto this parcel of land of a scale far exceeding anything it currently contains. Consequently, a reduction in the openness of the Green Belt would result.
8. At the hearing, the appellant submitted to me that a large garden would not be necessary and is not proposed. The submitted plans do not define a garden to serve the proposed dwelling as such but do indicate a hardstanding and areas of planting beside it. As a family home, I expect some domestic paraphernalia would accompany the dwelling at times. Washing lines, chairs and a table and children's toys being likely examples. Their presence would contribute further to the effects of the development upon the Green Belt's openness. However, I have no reason to conclude that any paraphernalia would be particularly extensive nor spread over a large area. The effects of the paraphernalia would be likely to be far more limited than that of the dwelling itself.
9. The section of Benington Road adjacent to the site is not served by footpaths and during my visit vehicles were travelling along it at quite high speeds. I felt it would be unsafe to spend time on the road, to walk along it to the bridleway adjacent to the site's southern boundary or further afield. This affected my ability to assess precisely in which views beyond the site the dwelling would or would not be visible.

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<sup>1</sup> Planning application reference 3/22/1214/FUL

10. Despite these limitations, many passers-by would be travelling by car and likely quite quickly. Some screening of the proposed dwelling from Benington Road would be provided by the existing landscaping and buildings. Mature trees between the site and bridleway to the south would also provide screening in views from this route. As a result and in the absence of substantive evidence to the contrary, I find that the proposed dwelling would be unlikely to appear very prominently in views from public vantage points beyond the site.
11. Despite my findings on visual prominence, it would nevertheless be the case that the development would lead to a loss of openness of the Green Belt, principally because of its spatial effects.

*Other considerations*

12. The Framework states that inappropriate development in the Green Belt should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.
13. In the countryside, policy HOU5 of the LP sets out that dwellings for rural businesses will only be permitted in exceptional circumstances and where certain criteria are met. This includes a requirement to demonstrate 3 tests. Firstly, that the dwelling is essential to the needs of the business. Secondly, that the enterprise has been established for at least 3 years, is financially viable and should remain so and thirdly, that no other accommodation within the site/holding or the locality is currently suitable, available or could be made available. Amongst other matters, policy 10 of the Walkern Parish Neighbourhood Plan 2017-2033 (NP) states that single rural homes will only be supported where there is a demonstrable need for them to be located in the countryside.
14. These development plan policies are very reflective of the advice at paragraph 84 of the Framework which states that isolated homes in the countryside should be avoided unless there is an essential need for the rural worker to live permanently at or near their place of work in the countryside.
15. At the hearing, the Council confirmed that its objections did not include an assertion that the enterprise was not established, was not viable or was not likely to remain so. The Council consider that the second test contained within policy HOU5 is met and I have no reason to disagree.
16. Together, the written evidence and the discussions held at the hearing show me that of the various farming activities undertaken, it is that related to calving which would require the most intensive supervision. During the lead-up to calves being born, the birth itself and a period there afterwards, the day-to-day management of the cows and calves would require particular attention and would not be limited to normal working hours. During these times, the appellant's presence on site to assist with the essential care of the animals at short notice would be important. This presence would enable, amongst other matters, close attention to be paid to the heifers for signals of the on-set of the birth process and to the calves to ensure they are feeding and healthy. The proposed dwelling, sited so close to the existing buildings where the cows are housed at times and the proposed nursery field where the new-born calves and

their mothers would be first kept, would maximise the appellant's ability to supervise the animals.

17. A camera is positioned on an agricultural building within the site which is linked to the appellant's phone. The camera has a very broad field of vision. Therefore, some technology is being used by the appellant to assist with calving. Whilst the appellant explained to me his reservations with the use of technology, I am not satisfied that the potential assistance it would bring has been fully explored. For example, the issue of rain affecting the clarity of the camera's vision could be resolved by the installation of further cameras in more sheltered positions.
18. Following the discussions at the hearing it is clear to me that an all-year-round approach to calving is not being adopted. Instead, spring-time calving is undertaken. I heard some diverging evidence regarding how long the calving period lasts. The Council's understanding was that it is between 6-7 weeks long. The appellant referenced a 12-week critical pregnancy period for the heifers whilst it was confirmed that, on average, calves would be in the nursery field for around 28 days. Regardless, I find that the calving period of the enterprise is seasonal. This is the case even though the size of the enterprise's herd has recently increased.
19. Other principal activities undertaken at the farm such as haylage, the grazing and supplementary feeding of the animals together with their visual checking, would not necessitate the same degree of intensive oversight. Therefore, outwith of the calving period, there would be significant spells in the year where there would not be the requirement for the same degree of animal supervision. Farming activities which would require a less urgent response would be the focus of the enterprise.
20. The land which the appellant farms is also somewhat dispersed. Therefore, although the calves and heifers would be kept close to the proposed dwelling for a period, many of the other farming activities undertaken take place on land which is a quite considerable distance from the proposed location of the dwelling. The dwelling would not be within sight and sound of all of this land limiting the benefit of its siting and occupation.
21. For these reasons, to have the proposed dwelling permanently is not a proportionate response to the needs of the business. The dwelling is not essential to the needs of the farming enterprise.
22. I recognise that crime is of a concern to the appellant and I have been provided with some evidence of rural theft in Hertfordshire. The existing camera already provides a means of surveillance and some deterrent to crime. Opposite the site there are houses, including one within which some of the appellant's family resides. I expect the presence and orientation of these dwellings also provides a deterrent. I have no substantive evidence before me of what other means have been explored to bolster the site's security. I expect that there are a range of actions which could be taken or installations made which would assist in this regard. Consequently, the dwelling proposed is not essential in order to keep the enterprise secure.

23. Planning permission<sup>2</sup> was previously granted for overnight welfare accommodation within an agricultural building at the farm. However, the activities undertaken at the farm at that time differed to those undertaken now. The accommodation proposed was smaller in scale and by reason of being housed within an existing building, its effects upon the openness of the Green Belt are not comparable with that which would result from the appeal proposal. Moreover, the accommodation has been destroyed by a fire. For these reasons, that the Council previously granted planning permission for a form of living accommodation at the farm is not of meaningful weight in my determination.
24. At the hearing, the appellant explained that he had been living within the aforementioned welfare accommodation and that once that was destroyed, the mobile home was brought onto the site around 7 years ago. The appellant also stated that the mobile home has been his only residence for the last 5 years. During discussions, the appeal parties agreed that the mobile home does not have planning permission.
25. In this appeal, it is not my role to determine whether the use of the mobile home is lawful. This can only be formally determined by a lawful certificate application. However, the evidence before me that the mobile home is lawfully occupied is not compelling. In the circumstances, I only ascribe limited weight to its presence. Even though the appellant may have been living within the mobile home all of the time for several years, given my above findings on the operations of the farm, the reasons for him doing so now do not stem from the essential needs of the enterprise. For these reasons, that the appellant has been residing within the existing mobile home does not demonstrate an essential need for the dwelling nor weigh in favour of the proposal to any significant degree.
26. Furthermore, the proposed dwelling would also be larger than the existing mobile home by reason of its length and depth whilst it would also be considerably taller. Given its size, the proposed dwelling would have a greater effect upon the openness of the Green Belt than the existing mobile home. Any betterment derived from the dwelling's aesthetic in comparison to the somewhat utilitarian mobile home would be outweighed by the increased level of harm that would be wrought upon the openness of the Green Belt. Consequently, the appeal scheme would also be the more harmful development within the Green Belt.
27. In regard to alternative accommodation, the appellant's more substantive submissions relate to the lack of and prohibitive cost of family homes to buy within settlements in the local area. I have identified above that the permanent family dwelling proposed is not a proportionate response to the needs of the enterprise and that such a dwelling is not essential to the needs of the business on such grounds.
28. Therefore, any alternative accommodation options could encapsulate a broader range of accommodation. This could include smaller and shorter-term forms of accommodation, including those which would entail the adaptation of an existing building. Such options could have more limited effects upon the openness of the Green Belt. A thorough exploration of such alternatives has not taken place.

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<sup>2</sup> Planning permission reference 3/16/0188/FUL

29. For the reasons given above, it has not been demonstrated that there is an essential business need for the agricultural worker's dwelling proposed nor that there is no other accommodation which is currently suitable, available or could be made available to serve the needs of the business. The proposal therefore conflicts with policy HOU5 of the LP and policy 10 of the NP. It also conflicts with the advice of paragraph 84 of the Framework.
30. In coming to this view, I acknowledge that those keeping and caring for livestock are governed by legal requirements such as the Animal Welfare Act 2006 and the Welfare of Farmed Animals (England) Regulations 2007. However, I am satisfied that in the absence of planning permission for the development that the animals could still be appropriately and responsibly looked after, without conflict with imposed duties and welfare standards.
31. If the appellant were to reside permanently within the proposed dwelling on site rather than off-site for any durations, the need for a commute to work would be avoided. Even so, given the appeal site's isolation from settlements, there would still likely be the need to undertake frequent journeys via private vehicle to access services and facilities. Furthermore, as some of the land farmed is quite far from the appeal site, vehicular trips would still be needed to tend to it. The benefit which would be derived from limiting the need for private vehicular trips would, therefore, be modest. I also have no substantive evidence that the farming enterprise could not grow or expand without the dwelling proposed.
32. Subject to the imposition of conditions as necessary, the development would not harm the living conditions of existing or future occupiers, would preserve existing landscaping features and would result in no conditions detrimental to highway safety. The development would also use water efficiently and be adequately adapted to the threat of climate change. However, the absence of harm in relation to these matters is a neutral factor in my determination and does not weigh in favour of the proposal.
33. Appeal decisions relating to other forms of agricultural workers accommodation have been submitted in evidence. Although I have had regard to these and considered the submissions of both appeal parties in respect of them, I have formed my own view on this appeal based on the evidence before me and taking account of the particular circumstances of the case.
34. The evidence before me indicates that the Council cannot demonstrate 5 years' worth of housing land supply. Paragraph 11(d) of the Framework is therefore engaged. In providing only a single dwelling, the boost to housing supply would be very modest. Furthermore, the dwelling would be occupied by an agricultural worker and would not therefore provide housing for home-seekers more generally. The weight I attribute to the proposal's contribution to housing supply is limited as a result.
35. Consequently, having regard to all of the above, the proposal would constitute inappropriate development in the Green Belt which is, by definition, harmful to it. Further harm to the Green Belt would be caused by its effects upon openness. I attribute substantial weight to this harm.
36. As a whole, the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development referenced at paragraph 153 of the

Framework, do not exist. Having regard to paragraph 11(d)(i) this provides a clear reason to refuse the development. As policy GBR1 of the LP requires that proposals are considered in line with the Framework, it follows that the proposal also conflicts with this policy.

37. Article 8 of the Human Rights Act 1998 provides that everyone has the right to respect for their private and family life, their home and their correspondence. The appellant has submitted that he and his family have been living separately and that the proposed dwelling would provide a means for the family to live together on the site. In dismissing the appeal, this particular means cannot take place. However, it is also the case that living together as a family has already not been taking place and in that sense, circumstances would not alter as a result of my decision. I have attached substantial weight to the harm that the development would cause to the Green Belt. The Article 8 rights are qualified and any interference with them in this instance would accord with the law and be in pursuance of a well-established and legitimate aim: the protection of the Green Belt. The protection of the public interest cannot be achieved by means that are less interfering with their rights. It is proportionate and necessary to refuse to grant planning permission.

### **Conclusion**

38. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

*H Jones*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mark Kirbyshire  
Alison Young  
James Dunn

Appellant  
Alison Young Planning Associates  
RSK ADAS Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Maya Cullen  
Rachael Collard  
Neil Button

Senior Planning Officer  
Development Management Team Leader  
Strategic Sites Team Leader