



Appeal Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/F2605/W/24/3342227

Waterways Farm, Church Road, Harling, Norfolk NR16 2NB

- 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 C Green against the decision of Breckland Council.
 - The application Ref is 3PL/2023/1135/F.
 - The development proposed is erection of agricultural dwelling and barn.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name has been confirmed as Mr C Green. At my site visit, I observed a barn had been erected within the appeal site.
3. At the hearing, the appellant provided a final signed Unilateral Undertaking (UU) dated 9 July 2024 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended). This secures a contribution towards the Norfolk Green Infrastructure and Recreational Impact Avoidance Mitigation Strategy (GIRAMS). The Council confirmed it was satisfied with the content of the UU and that it would address the fifth reason for refusal. I therefore do not need to address this as a main issue. I will return to the UU in due course.
4. I agreed at the hearing that it would be acceptable for wording for a proposed no dig condition and a copy of the GIRAMS to be submitted after the close of the hearing.

Main Issues

5. The main issues are:
 - whether there is an essential need for the proposed agricultural worker's dwelling;
 - whether the proposed dwelling would be in an appropriate location with regard to the risk of flooding;
 - the effect of the proposed development on the character and appearance of the countryside; and
 - the effect of the proposed development on trees and hedgerows.

Reasons

6. Waterways Farm is located within the countryside for planning policy purposes. New housing development in the countryside is controlled within the Breckland Local Plan (2023) (LP). An exception to this control are rural worker dwellings as set out in Policy HOU 13 of the LP. This policy permits permanent dwellings in the countryside for full-time workers in agriculture, horticulture, forestry and other rural activities subject to certain criteria being met, including that the dwelling is essential to the functional needs of the business, and that it has been established that the enterprise has been established for at least 3 years and is, and should remain, financially viable.

Essential Need

7. Waterways Farm occupies a single area of land. The enterprise has previously had a herd of cattle and benefitted from having higher level stewardship status. This has lapsed, and the number of cattle has reduced to 5. The appellant confirmed this, at least in part, was due to previous losses of calves in a short timescale which they did not wish to happen again. There is also a boarding kennels within the enterprise which has been established for some time. The Council has expressed reservations about the relevance of the kennels for the purposes of this appeal. However, in light of the support for a prosperous rural economy contained in paragraphs 88 and 89 of the National Planning Policy Framework (the Framework), I consider it is reasonable to include the boarding kennels as part of the operation of the enterprise.
8. The enterprise has previously been run by the appellant's father with the appellant working alongside him. His father confirmed at the hearing he wished to retire and the appellant confirmed the business was now in his name. For the past three years, the appellant and his family have lived in his parent's home. They wish to have their own dwelling.
9. The appellant is proposing two calving seasons as part of the agricultural business for his intended expanded herd of at least 20 cattle. It is the appellant's intention for calving to take place in the barn which would be located close to the proposed dwelling to allow observations and supervision and to allow any emergencies to be dealt with quickly. The appellant accepted that calving accounted for 4 months of the year but during this time it was not disputed that this would be an intensive period of activity.
10. It is a condition of the licence for the boarding kennels that there is a 24 hour presence on the site. The boarding kennels are monitored by camera, with an alert being sent to the appellant in certain circumstances. In the event of dogs fighting, it would be necessary for the appellant to intervene quickly.
11. There is no substantive evidence before me as to incidences of crime at the enterprise. However, the Council did acknowledge rural crime is an issue for residents in the countryside. I have no reason to dispute the appellant's assertions that a permanent presence on the farm would act as a deterrent to organised but opportunist criminal acts. This also weighs in favour of the proposal, albeit to a limited extent.
12. The Council directed me to a recent appeal decision¹ where it was concluded that a functional need for an agricultural worker on the site had not been

¹ APP/F2605/W/23/3333556 Dismissed 21 May 2024

demonstrated. However, I have considered this appeal on its own merits which are unlikely to be identical to those in other cases.

13. On the basis of the evidence before me, that the agricultural and boarding kennels businesses are established and the agricultural enterprise will be expanded I am satisfied that there is an essential need for a full time worker to reside on the site. In reaching this conclusion, I have had regard to the advice in the Planning Practice Guidance² (PPG) that the continued viability of a farming business through the farm succession process can be a relevant consideration.
14. However, whilst the evidence before me indicates that the enterprise has been established for at least 3 years, in accordance with Policy HOU 13, the policy also requires that it is demonstrated that the business is and should remain financially viable.
15. The appellant has provided a financial statement prepared by chartered accountants which includes details of turnover and profit for both the boarding kennels and the livestock business. It includes an estimate for the year ending 31 March 2023 which purports to show a substantial increase in profits for the boarding kennels and states that a review of bank statements shows a similar set of results. It indicates similar results for the livestock business from year ending March 2022 onwards.
16. However, there is no evidence before me of expenditure over the same time period, or any contextual information to explain the changing levels of turnover and profit in the livestock business when the evidence before me suggests the number of cattle was at best stable, if not declining. While the appellant confirmed at the hearing the enterprise was now VAT registered, I do not know the precise effect of this on the viability of the enterprise, or the impact of the cost of the construction of the barn. The appellant's statement also refers to the records showing funds in place to cover the build costs, but there is not such detail before me.
17. The appellant intends to expand the business through re-applying for higher level stewardship status which would provide a basic payment, with further financial support potentially to allow for additional conservation activities. However, there is not a business plan or projection with anticipated expenditure costs to demonstrate how and when this expansion would take place or when it is anticipated the higher level stewardship status would commence.
18. Overall, there is insufficient information before me to allow me to ascertain that the enterprise is financially viable or to have a sufficient degree of confidence that the enterprise will remain viable for the foreseeable future. Accordingly, there is conflict with Policy HOU 13 which permits rural workers dwellings only where certain criteria, including the financial viability of the enterprise, is met.
19. It is likely that there would be other dwellings available within East Harling given the level of supply identified by the appellant when the appeal was submitted. However, I have accepted the appellant's arguments with the need for there to be an on-site presence. While there are dwellings within a similar

² Housing Needs of Different Groups Paragraph: 010 Reference ID: 67-010-20190722 Revision date: 22 07 2019

distance from the boarding kennels within East Harling, they are very limited in number and I cannot be certain that any of them are available.

Flood Risk

20. Part of the access to the site lies within Flood Zones 2 and 3a. LP Policy ENV 09 requires development to be located to minimise the risk of flooding and for applications for vulnerable development in Flood Zones 2 and 3a to be accompanied by a site-specific flood risk assessment. Annexe 3 of the Framework confirms that dwellings are a more vulnerable form of development. Both Section 14 of the Framework and the PPG³ are clear that development should be directed away from areas at highest risk and take into account all sources of flooding. There is no flood risk assessment or sequential test before me in written evidence.
21. The appellant has directed me to caselaw⁴ with respect to the need for a sequential approach to be taken to surface water flood risk. However, the circumstances which led to that decision no longer apply following the revision of the PPG on Flood Risk and Coastal Change. The PPG⁵ is now unequivocal that the aim of the sequential approach is to avoid so far as possible development in current and future medium and high flood risk areas considering all sources of flooding.
22. The parties were not able to agree whether the proposed dwelling would be sited outwith the area at risk of surface water flooding as shown on the Environment Agency maps. There was no flood risk assessment submitted with the appeal demonstrating, as the Council suggested, the position of the proposed dwelling relative to the areas at risk of surface water flooding. Given the scale of the maps submitted by both parties, I cannot be certain that the dwelling would be sited outside the area at risk of surface water flooding.
23. I have not been directed to any policy or guidance which would compel me to consider that a flood risk assessment and sequential approach would only be required where the built aspects of a development lie within the areas at highest risk of flooding. While it may be the case that were the access to the site public highway, no part of the proposed development would be within Flood Zone 2 or 3a, that is not the proposal before me. It therefore would be necessary for there to be a flood risk assessment and sequential test to demonstrate the proposed development would be in an appropriate location with regard to the risk of flooding.
24. The matter of the sequential test was explored at the hearing. The parties do not agree on what an appropriate area of search would be. The appellant sought to argue that given the proposal is for an agricultural workers dwelling to serve this enterprise, Waterways Farm was the appropriate area of search. That being the case, the siting of the dwelling within the area of the site at the lowest level of flood risk was sufficient to satisfy the sequential test. However, it was accepted by both parties that Waterways Farm has a right of access to Fen Lane and that this access lay within Flood Zone 1. This therefore means that the proposal would not satisfy even an enterprise-only sequential test as a means of access at a lower risk of flooding would be available.

³ Flood Risk and Coastal Change

⁴ R. (on the application of Substation Action Save East Suffolk Ltd) v Secretary of State for Energy Security and Net Zero [2024] EWCA Civ 12

⁵ Paragraph: 023 Reference ID: 7-023-20220825 Revision date: 25 08 2022

25. Notwithstanding, it has been put forward that this could be secured as an emergency access, despite the Local Highways Authority (LHA) recommendation that access to Fen Lane be prevented by condition. Reference was made to a previous proposal⁶ which would have utilised Fen Lane as an access. These appeared to suggest that due to the existing right of access, it would be unreasonable to prevent its use, subject to conditions to ensure the safety of this access. The appellant suggested this matter could be addressed through the use of a 'Grampian' condition which would require details of the emergency access to be agreed.
26. However, the red line for the appeal site was restricted to the access and location of the buildings and no other land was shown as being within the appellant's control. Although the Statement of Common Ground showed the land that is owned by the Green family, I must consider the appeal on the basis of the submitted plans. It therefore would not be appropriate to use a condition to secure the emergency access.
27. There is not a sequential test before me. Nor is there sufficient evidence before me to demonstrate that the proposal would pass such a test given the uncertainty of the extent of the area at risk of surface water flooding and the option of an access that would be at a lesser risk of flooding. It is therefore not necessary for me to consider whether it would pass both elements of the exception test.
28. On the evidence before me, I cannot be certain that the proposed dwelling would be in an appropriate location with regard to the risk of flooding. Accordingly, it would be contrary to LP Policy ENV 09 which requires development to be located to minimise the risk of flooding. It would also be contrary to the advice in Section 14 of the Framework which requires development to include safe access and escape routes where appropriate.

Character and Appearance

29. The site of the proposed dwelling would be some distance from the existing farmhouse and kennels. It would not be in physical or visual proximity to the existing buildings on the farm. While the appellant has indicated this location has been directed by the nature of the flood risk on the site, there is no substantive evidence of this before me as previously considered. Consequently, I consider that the proposal would result in the development of an isolated dwelling in the countryside.
30. Although the landscape is not identified as being valued, there is an intrinsic character and beauty to the area arising from the open fields and the backdrop of the expansive woodland. This would be disturbed by the erection of a dwelling, however modest and designed as proposed, and the associated domestic paraphernalia which would likely accompany it. These effects would not be mitigated by the presence of the barn, which, as an agricultural structure, would be expected to be found in such a location and would be perceived as having less of a visual impact due to the open nature of some of its sides. Nor would landscaping suitably mitigate the identified harm.
31. The proposal would have a harmful adverse effect on the character and appearance of the countryside. It would be contrary to LP Policies HOU 13 and

⁶ 3PL/2023/0204/F

ENV 05 which, taken together and insofar as they relate to this main issue, expect development to contribute to the local environment by recognising the intrinsic character and beauty of the countryside. It would also be contrary to the requirements of paragraph 84 of the Framework which seeks to avoid the development of isolated dwellings in the countryside.

Trees and Hedgerows

32. At my site visit, I observed the wooded area which lies within the East Harling Common County Wildlife Site 783 (CWS). This is separated from the appeal site by a drainage ditch. In addition to the value of the trees as part of the CWS, they also positively contribute to the rural character and appearance of the area. Given the proximity of the proposed dwelling to these trees, it would be necessary to ensure that they would not be harmed were permission to be granted for the proposal. Both parties agreed that this could be controlled by a suitably worded planning condition in the event that planning permission was granted. I concur.
33. Subject to the imposition of an appropriate condition, the proposed development would not have an adverse effect on trees and hedgerows. It would therefore be in accordance with BLP Policy ENV 06 which requires trees and significant hedge masses to be retained.

Other Matters

34. The appellant confirmed at the hearing they would be willing to accept a temporary permission, and that the proposed dwelling could be constructed in a manner similar to a lodge type building. While both Breckland Local Plan (2023) (LP) Policy HOU 13 and the PPG allow for temporary conditions, it is normally where an enterprise is newly established. While the business may have recently transferred to the appellant, part of their case is that the proposal is to allow for farm succession and this forms part of my conclusion that there would be a functional need for the dwelling. Furthermore, the proposal before me is for a permanent dwelling. Having regard to the tests in paragraph 56 of the Framework and the advice in the PPG⁷, I cannot conclude that such a condition would be reasonable.
35. It is not in dispute that there is no other accommodation within the holding that would provide suitable accommodation, nor has a building suitable for conversion been sold within the last 5 years within the holding. The appellant indicated at the hearing that he intended to construct much of the dwelling himself to reduce costs and that it would be funded by him personally but would accept a condition linking occupation of the dwelling to Waterways Farm. However, as this would be a requirement of LP Policy HOU 13, it does not weigh in favour of the proposal.
36. The appeal site is within the zone of influence for the habitats sites addressed by the GIRAMS and which are subject to pressures from recreational disturbance. The appellant has submitted a completed UU which would secure the contribution identified by the GIRAMS. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of the habitats sites and if the mitigation

⁷ Use of Planning Conditions Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

had been appropriately secured. However, it has not been necessary for me to pursue this issue as a finding that the proposal would not have an adverse effect on the integrity of the habitats sites, with or without any mitigation, would be at best a neutral matter.

37. Not without reservation, the appellant accepted at the hearing that a recent appeal decision had found that the Council could demonstrate a five year supply of deliverable housing land. However, the proposal would nonetheless provide an additional dwelling which would support the Government's objective of significantly boosting the supply of homes.
38. A small length of the access road to the appeal site is immediately adjacent to Eastfield House, a Grade II listed building,⁸ and lies within the Harling Conservation Area (CA). The significance of Eastfield House is in its architectural significance as a fine house from the 1840s built in a combination of Jacobean and Gothic styles, and its historic significance as evidence of the historic growth and development of Harling. The significance of the CA is in its residential character and linear appearance with development fronting to the road and plot sizes gradually increasing as the settlement disperses into the countryside. This creates a regular sense of enclosure which is occasionally interspersed with accesses to the rural land to the rear.
39. The proposed dwelling and barn would be some distance from both designated heritage assets and would not affect the setting of either. The access road is existing, and the additional traffic that would be generated by the proposed development would not materially alter the level or type of use of the access road. Consequently, the setting of the listed building and the character and appearance of the CA would both be preserved in accordance with the requirements of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
40. Necessary ecological mitigation and enhancement measures could be secured by condition. There would be no harm to highway safety from the use of the existing access. There would be a minor benefit from the ecological enhancement measures. The other factors would be neutral.

Conclusion

41. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR

⁸ List Entry Number 1168576

APPEARANCES

FOR THE APPELLANT

Chris Green	Appellant
Robert Green	Appellant's Father
Jason Parker	Parker Planning Services
Thomas Wheatley	Parker Planning Services

FOR THE LOCAL PLANNING AUTHORITY

Richard Laws	Principal Development Management Planner
Naomi Minto	Development Management Planner

DOCUMENTS SUBMITTED AT THE APPEAL

DOC 1 - Unilateral Undertaking
DOC 2 - Appeal Decision Ref APP/F2605/W/24/3336631

DOCUMENTS SUBMITTED AFTER THE APPEAL WITH MY AGREEMENT

DOC 3 – Proposed Condition Wording
DOC 4 - Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy - Breckland Council