



Appeal Decision

Hearing held on 29 April 2025

Site visit made on 29 April 2025

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2025

Appeal Ref: APP/C1570/W/24/3357859

Firtree Farm, Pages Lane, Stebbing, Essex

Grid Reference Easting: 565717, Grid Reference Northing: 226731

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Parker Bowles against the decision of Uttlesford District Council.
 - The application Ref is UTT/24/1953/OP.
 - The development proposed is outline planning application with all matters reserved for a proposed permanent self build agricultural dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr D Parker Bowles against Uttlesford District Council. The application for costs is the subject of a separate decision.

Preliminary Matters

3. At the hearing, the appellant confirmed his agreement to the description of the development used on the decision notice. The description accurately reflects the proposal and is therefore used in the banner heading above.
4. The grid reference points are more precise in identifying the site's location than the postcode. Therefore, I have removed the postcode from the address.
5. The application was made in outline with all matters reserved. I have considered the appeal on this basis, and I have regarded the details of the dwelling shown on the submitted plan as illustrative.
6. The Council is currently preparing a new Local Plan (LP), which was submitted for examination in December 2024. At the hearing, the parties agreed that the policies of the LP carry limited weight at this stage given they are subject to change through the examination process. Furthermore, I have not been directed to any policies that would fundamentally change the approach to the appeal proposal. Therefore, I have considered the appeal with regard to the adopted development plan policies.

Main Issues

7. The main issues are:

- whether the site is a suitable location for the proposal, having particular regard to its countryside location and whether there is an essential need for a dwelling to accommodate a rural worker;
- the effect of the proposal on the character and appearance of the area; and
- whether the proposal would accord with the statutory provisions for biodiversity net gain.

Reasons

Whether the site is a suitable location

8. It is common ground that the proposal would constitute an isolated dwelling in the countryside. Policy S7 of the Uttlesford Local Plan (Adopted 20 January 2005) (ULP) restricts development in the countryside except where there is a need for a rural location, or it is otherwise appropriate to the rural area. In that regard, Policy H12 of the ULP allows for new dwellings for agricultural workers where certain criteria apply, including a) where it can be demonstrated there is an essential need for someone to live permanently on site to provide essential care to animals or processes or property at short notice.
9. The ULP pre-dates the National Planning Policy Framework (the Framework). However, at the hearing the parties agreed that the general thrust of Policies S7 and H12 is broadly aligned with the Framework insofar as it seeks to recognise the intrinsic character and beauty of the countryside, and to avoid the development of isolated homes except, amongst other things, where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. I see no reason to take a different view.
10. The Planning Practice Guidance (PPG) provides further advice as to the considerations that may be relevant when considering rural worker's dwellings¹. These include where there is evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry, or similar land-based enterprise (for instance, where farm animals or agricultural processes require on-site attention 24-hours a day or where otherwise there would be a risk to human or animal health or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products). Other relevant criteria include the degree to which there is confidence that the enterprise will remain viable for the foreseeable future.
11. The appellant began to establish his Topiary Hire business from the site in 2020. The enterprise involves the cultivation and care of a wide range of trees and plants, including tropical species, topiary, succulents and orchids. The business operates predominantly on a hire basis for occasions such as weddings, high-profile sports events, music festivals, and filming events for TV and the media. Following the hire period, the plants are returned to the site for further growth, nurture and subsequent re-hire. Due to the nature of the events served, there is a necessity for plants to be in high-quality condition and available as such at short notice. This entails intensive and delicate operations throughout the year to ensure high standards and the availability of stock.

¹ PPG Paragraph:010 Reference ID: 67-010-20190722

12. The appellant resides in a caravan on the site, which was granted a temporary planning permission in 2020 that has since expired. He has a hands-on role in all aspects of the business, including carrying out horticultural tasks, over-seeing workers, and managing customer orders and deliveries. Staffing levels have fluctuated over time. However, the enterprise currently supports 3 workers throughout the year who are paid on an hourly rate plus ad hoc casual labour. There are 3 polytunnels on the site, 2 of which are heated, as well as a range of storage units including a large building. Plant stock is stored in the polytunnels or externally in pots or in the ground.
13. Due to its horticultural nature, this is not a business where there are implications for animal or human health that require 24-hour attention. However, the PPG also allows for scenarios where a rural worker may be required to reside permanently on site to deal quickly with emergencies that could cause serious loss of crops or products. Therefore, rural worker's dwellings are not precluded for horticultural operations as a matter of principle.
14. Many of the activities described by the appellant are carried out in the daytime and some processes, including irrigation and heating, are semi-automated. The plants have a degree of shelter; and weather forecasting means that some pre-emptive action can be taken in advance of temperature extremes and weather events. Therefore, whilst an on-site presence is no doubt convenient, not all elements of the business would justify a home in this countryside location.
15. However, the Council conceded at the hearing that a level of need for a dwelling on the site was established at the time the temporary caravan permission was granted; and I have not seen or heard any evidence that indicates there has been any substantial change to the nature of the business or its operational requirements since that time. There are clearly unique challenges involved with nurturing a wide range of individual plant species with specific needs, including tropical plants that would not ordinarily be grown in the UK climate. In particular, I heard that these species are very sensitive to temperature fluctuations, requiring regular manual adjustments to the temperature of the polytunnels throughout the day and night; and the relocation of individual species depending on their tolerance to hot and cold temperatures. This is a delicate and intensive operation, requiring specialist knowledge of the plants and on-site equipment, which are specific to the business at Fir Tree Farm.
16. Furthermore, the irrigation system is susceptible to damage by wildlife and it therefore requires frequent monitoring; and some pest control measures can only be undertaken after sundown and take many hours to complete. I also heard that the filming industry operates on a 'just-in-time' basis, whereby it is common for orders to be placed at short notice for delivery at 5am the next day. This necessitates the preparation of stock for transport late into the night or in the early hours of the morning on a regular basis during the peak Spring/Summer season. Additionally, there is increasing demand for products throughout the Autumn and Winter due to the growing popularity of ice-rinks and Christmas events.
17. Whilst some measures to protect against high winds and snow can be undertaken in advance, I heard that the risk of unexpected extreme weather or the failure of the protective measures undertaken could result in the loss of a significant proportion of the most sensitive species in a short time period. Even if the plants were to survive, they could wilt and would therefore be less resilient to the stresses

of transport and the customer hire process. This would mean that orders would not be fulfilled, high customer standards would not be met, and there would be a loss of income and reputational damage that would harm the viability of the business.

18. The enterprise has established in a manner that has taken account of the appellant's existing 24-hour presence on the site to react and respond to the changing needs of the diverse range of individual plant species. Indeed, I heard that it is because the appellant has been able to respond in real-time to emergencies and fluctuations in weather conditions, that there is little record of severe stock damage having occurred in the past. Moreover, whilst some tasks could be undertaken by other workers, these are supplementary to the work carried out by the appellant. There are inevitably periods of time when the appellant is away for personal or business reasons. However, these are a rarity, and compensatory arrangements are typically made.
19. The appellant maintains that it would be impractical and unviable to carry out the existing business if he lived off-site due to the need for round-the-clock monitoring and adjustments to the stock and equipment. Given the distance to the nearest settlements, I agree it would be impractical for the appellant to undertake his full range of tasks, involving early starts and late finishes throughout the year, by travelling to and from the site multiple times a day from a home elsewhere.
20. Overall, due to the remote location of the site, the diverse range of delicate plants requiring specific and intensive operations, and the economic implications of the loss or deterioration of the stock, there is evidential justification for a continued on-site presence 24 hours a day to ensure the effective operation of the business. In this regard, there are some similarities with the appeal decision at Strawberry Farm², whereby the Inspector took account of the intensive nature of the horticultural operation, amongst other things, in deciding to allow the appeal.
21. Financial statements have been provided for a business named Capital Investments (South East) Limited, which is stated to have a principal activity of letting and operating real estate. I heard that this is the name of a holding company for accounting purposes, and that in the past there was a letting element to the business which has now ceased. I also heard that the financial information within the statements provided relates solely to the horticultural business at Fir Tree Farm, and I have not been directed to any substantive evidence to refute this. I was informed that there is no legal requirement for the accounts to be audited and that the information provided with the appeal is in the same form as it was submitted to Companies House, save for the 2024 accounts which are in draft form. Consequently, I have accepted the accounts as robust evidence of the financial health of the business since it commenced operating at the site.
22. The financial statements show that the business operated at a loss in the financial years ending in June 2020 and June 2021. From the evidence I have seen and heard, this loss is attributed to the Covid-19 pandemic when a series of lockdowns and controls on social distancing prevented many social events from occurring, thus reducing the demand for horticultural products from the appeal business. However, the accounts show that the business achieved profits in 2019, 2022 and 2023, rising to a predicted significant net profit in the financial year ending in 2024. The overall position, therefore, is one of a comfortably profitable business.

² Appeal Decision Reference: APP/Y2620/W/20/3249813, dated 2 December 2020

23. The Council has stated that the profits should not be the sole basis upon which the viability of a business is established, and that further information is required including a business plan and viability appraisal. However, the financial accounts do not just show the profits of the business. They also show that turnover has increased significantly in recent years and that the appellant has made substantial investments in plant and equipment, which I heard includes the large storage building and polytunnels at the site. Moreover, the accounts show high level expenditure figures which includes sub-contracting costs for workers, the appellant's wages, and other administrative expenses. I have taken account of all of these factors in my assessment of the future prospects of the business.
24. Whilst I have not been provided with a detailed construction cost estimate for the proposed dwelling, the appellant referred to a budget which is based on a build cost of £1,500 per square metre. In the absence of evidence to the contrary and given that the appellant could undertake some building work himself, I have no reason to conclude this figure is unrealistic or that it could not be funded by the business. Moreover, the appellant described a pattern of repeat custom for large events and recent orders which would contribute towards future profits. Taking all of this information together, I see no reason to conclude the business is unlikely to be viable for the foreseeable future.
25. The Council has stated that the existing accommodation arrangements have not impeded the viability of the business, and therefore it is suggested that the caravan could be retained as an alternative to the appeal scheme. However, it is not unreasonable for the appellant to seek a higher standard of accommodation for his permanent home. Whilst the PPG advises that it may be appropriate for temporary dwellings to be granted for a trial period in the case of new enterprises³, I have not been directed to any similar guidance in respect of businesses that have become established. Moreover, the tests in Policy H12 of the ULP and the Framework are universal to all proposals for agricultural worker's dwellings, and they do not set out different thresholds that should be applied to the caravan as opposed to permanent dwelling proposed.
26. I have been referred to an appeal decision at Mill End Green Road⁴, whereby the Inspector took account of the impact of the appellant's off-site living arrangements on the viability of the business in dismissing a proposed rural worker's dwelling. However, the Mill End Green Road appeal is not directly comparable to the proposal, because the appellant already lives on the site and the business has evolved on this basis.
27. Overall, the evidence leads me to conclude there is an ongoing essential need for a dwelling to accommodate a rural worker at or near to Fir Tree Farm. Therefore, I find the site is a suitable location for the proposal notwithstanding its countryside location. It follows that there would be no conflict with Policies S7 or H12 of the ULP which, taken together, seek to resist development in the countryside, unless there is a need for a rural location which could include an agricultural worker's dwelling to meet an essential need.

³ PPG Paragraph: 010 Reference ID: 67-010-20190722

⁴ Appeal Decision Reference APP/C1570/W/23/3329214, dated 5 July 2024

Character and appearance

28. The area around the appeal site is distinctly rural in nature, comprising open fields interspersed by trees, hedgerows and lanes. Whilst there are some buildings and structures near to the site, including those related to the business at Fir Tree Farm, the defining feature of the area is its open and undeveloped character.
29. Whilst the dwelling would be physically separated from the horticultural operation by a fence and hedging, it would nonetheless be sited close to it and would be experienced in this context. Furthermore, the trees along the roadside are well-established and there is no evidence before me to indicate they are likely to be removed thus, in all reasonable likelihood, they would continue to provide a strong visual screen between Pages Lane and the appeal site.
30. The opening up of the existing access point would inevitably introduce some views into the site that are not currently available. However, the dwelling would be setback deeply within the site, which would reduce the likelihood of any harmful views of the building and associated domestic paraphernalia. Moreover, the Council would have control over the detailed design of the dwelling through its consideration of reserved matters applications, which would further ensure the proposal would be appropriate to the rural context by way of its scale, height, and appearance. This would ensure the proposal would not have a detrimental urbanising effect on the locality, notwithstanding that it would add built form to an undeveloped paddock.
31. Overall, the proposal would safeguard the character and appearance of the area. Consequently, there would be no conflict with Policies S7 and GEN2 of the ULP which, amongst other things, seek to secure that proposals are designed to be compatible with local character and to reduce the visual impact of new buildings.

Biodiversity Net Gain

32. Schedule 7A of the Town and Country Planning Act 1990 (as amended) (the Act) introduced a statutory framework for biodiversity net gain (BNG). Under the statutory framework, subject to some exemptions, every grant of planning permission is deemed to have been granted subject to the Biodiversity Gain Condition (BGC), which requires that at least a 10% increase in biodiversity value is met.
33. The proposal is advanced on the basis that, as a self-build dwelling, it would be exempt from the BGC. There is no dispute between the parties that the proposal would fall within the definition of a self-build home as set out in the Self-build and Custom Housebuilding Act 2015 (as amended) (the SBCH Act). The PPG provides further advice as to the meaning of the definition in the SBCH Act, stating that relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout⁵. It is clearly the appellant's intention to occupy the dwelling, and I have no reason to conclude that he would not be involved in its design and build. However, in order to qualify for the BNG exemption, there must be an effective mechanism before me through which the dwelling could be secured as a self-build property.

⁵ PPG Paragraph: 016 Reference ID: 57-016-20210208

34. The Council has suggested that the self-build dwelling could be secured via a condition in the event the appeal is allowed. However, in order to meet the requirements of the Framework, conditions must be enforceable. At the hearing, the appellant conceded that the condition suggested by the Council could be problematic, particularly given the outline nature of the application and the lack of available information about the individuals who would be involved in its design.
35. I have further concerns over the practicalities of enforcing the Council's suggested condition given that planning permission runs with the land. Specifically, even if advance notice of the intended occupier of the dwelling were provided, it would be unlikely that the Council could be certain as to whether the first occupier had had primary input into the design and layout of the dwelling until it was completed and occupied. At that point, any enforcement action taken by the Council would be likely to require a person who designed the home to reside in it, which could be impracticable and unreasonable, especially if the dwelling had subsequently been sold and occupied by a third-party rural worker. On this basis, I do not consider the Council's suggested condition would meet the tests for conditions set out in the Framework. Whilst reference was made at the hearing to alternative conditions used by other Councils, I do not have any such wording before me, and I am not convinced alternative condition wording would overcome my concerns.
36. I heard from the appellant that he would be willing to enter into a planning obligation to secure the self-build dwelling. However, there is no such planning obligation before me and, therefore, there is no effective mechanism through which the self-build dwelling could be secured as part of the appeal. It follows that the proposal is not exempt from the BGC.
37. Article 7(1A) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) sets out the minimum information requirements that should accompany applications that are subject to the BGC requirement. This information has not been provided and, moreover, there is very little information included within the appeal documents to suggest that BNG could be achieved through on-site and/or off-site gains. Without this information, I cannot form a view on whether or not the BGC is capable of being discharged successfully, and the proposal would not comply with Schedule 7A of the Act. Given BNG is a statutory requirement, this is a matter of principal importance to which I attach significant negative weight.
38. It is clearly open to the appellant to address this issue in a subsequent planning application through the submission of a suitable planning obligation to secure the self-build dwelling, or the mandatory information requirements for BNG. However, the Procedural Guide: Planning Appeals – England makes it clear that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially the same scheme that was considered by the local planning authority and interested parties at the application stage. I have therefore determined the appeal on the basis of the information before me.

Planning Balance and Conclusion

39. The proposal would accord with the development plan in respect of development in the countryside and dwellings for rural workers, and it would therefore accord with the development plan when read as a whole. In these circumstances,

paragraph 11c) of the Framework states that planning permission should be approved without delay and paragraph 11d) is not triggered.

40. The proposal would offer some social and economic benefits, through the provision of permanent housing whilst also supporting the continued growth of an existing rural enterprise. It would therefore make a modest contribution to local housing needs where there is a known shortfall in the housing land supply. The provision of permanent on-site accommodation would also continue to negate the need for vehicle trips for commuting purposes in the longer term. However, given the scale of the proposal and the inevitable reliance on private vehicle trips to access services and facilities, these benefits carry limited weight.
41. For the reasons given above, the proposal would fail to comply with the statutory provisions for BNG and this is a matter of principal importance to which I attach significant negative weight. Consequently, there are material considerations in this case that lead me to conclude that the appeal should be decided otherwise than in accordance with the development plan. Therefore, for the reasons given above, the appeal should be dismissed.

E Catcheside

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Barrow BSc (Hons) MRICS – Acorus Rural Property Services Ltd

Ms Louise Gregory – Acorus Rural Property Services Ltd

Mr Dan Parker-Bowles - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Genna Henry BA (Hons) MSc – Senior Planning Officer