Department for Communities and Local Government

Mr Tony Kernon
Greenacres Barn
Purton Stoke
Swindon
SN5 4LL

Our Ref: APP/L3625/A/14/2220464
Your Ref: KCC1380

26 March 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**
**APPEAL BY MR ROBERT FIDLER**
**HONEYCROCK FARM, AXES LANE, REDHILL, SURREY, RH1 5QL**
**APPLICATION REF: 14/0055/RET**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R O Evans BA(Hons) Solicitor MRTPI, who held a public local inquiry on 4, 5 and 13 November 2014 into your client's application to Reigate and Banstead Borough Council ("the Council") for the retention of a farmhouse for an agricultural worker, together with retention of conservatory, fish pond, patio and extended patio, hardstanding, walls and steps, and proposed residential garden to serve the dwelling in accordance with application Ref: 14/00055/RET, dated 13 January 2014.

2. On 16 January 2015, the appeal was recovered for decision by the Secretary of State under section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because it relates to proposals which raise important or novel issues of development control and/or legal difficulties.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and permission granted for a maximum period of 3 years. For the reasons given below, the Secretary of State disagrees with the Inspector's overall recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising following the close of the Inquiry**

4. Following receipt of the IR, and in line with footnote 28 to that Report, the Secretary of State wrote to you on 23 February 2015, copied to the Council, seeking clarification of your client's current position with regard to the land holdings, including an indication of the length of any new tenancies put in place to replace the tenancies which expired on 25 December 2014 (after the close of the inquiry). You replied on 11 March 2015, enclosing an additional letter from your client and details of the recently renewed

Jean Nowak, Decision Officer
Planning Casework Division
Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Tel 0303 444 1626
Email pcc@communities.gsi.gov.uk

tenancies, saying that a copy of the signed sheets of the tenancy agreements had been sent to the Council. The Secretary of State and has not taken into account the details of the tenancies save for noting the facts that the agreements themselves are signed but undated and the tenancies run for one year from 26 December 2014 to 25 December 2015. The Secretary of State also received a letter from the Council dated 4 March 2015 concerning the renewal of the lease. The Secretary of State has taken full account of all this correspondence (apart from the details of the tenancy agreements) in coming to his decision, and copies of the relevant papers may be obtained, on written request, from the address at the bottom of the first page of this letter.

**Policy considerations**

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the Reigate and Banstead Core Strategy. This was adopted in July 2014 and confirms the designation of 70% of the Borough, including the appeal site, as Metropolitan Green Belt (IR7).

6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the subsequent planning guidance; as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. For the reasons given at IR8-11, the Secretary of State agrees with the Inspector's views on the interpretation of paragraph 55 of the Framework.

**Main issues**

7. The Secretary of State agrees with the Inspector (IR12) that the main issue is whether, taking account of the harm to the Green Belt and any other harm, the very special circumstances necessary exist to justify the provision of a permanent dwelling and, if so, whether the particular dwelling which is the subject of the appeal can be justified. He has also gone on to consider whether the case for granting temporary permission has been made out.

**Harm to the Green Belt/other harm**

8. Having carefully considered the Inspector's consideration of the form and siting of the dwelling and its visibility, as described at IR14-19, the Secretary of State agrees with his conclusion at IR19 that it appears as an extension and consolidation of the buildings around the yard and thus fails to maintain openness or to assist in preventing encroachment into the countryside. The Secretary of State therefore agrees with the Inspector that, as it stands, and taken as a whole, the development causes serious harm to the openness of the Green Belt and detracts from the rural character and appearance of most of its surroundings, to which he attributes substantial weight.

**Very special circumstances & agricultural need**

9. Like the Inspector, the Secretary of State has therefore gone on to consider whether there are any very special circumstances to justify the appeal scheme. He has given very careful consideration to the Inspector's reasoning at IR20-21 and accepts the conclusion at IR21 of a present functional need for the full time presence of a stockperson. Furthermore, having considered the Inspector's findings at IR22-23, the Secretary of State accepts his conclusion at IR23 that, although there remains an element of doubt over the accuracy of some of the figures given for stock numbers and movements, this is not sufficient to undermine the case on functional need.

10. Taking account of the Inspector's arguments at IR22-28, the Secretary of State agrees with him at IR29 that it is the agricultural element of the business, and specifically the beef cattle herd operation, that gives rise to the need for a 24 hour presence and which must therefore be shown to be financially sustainable in order to demonstrate the need for such a continuing permanent presence on site. But, in that regard, the Secretary of State also agrees with the Inspector's conclusion at IR29 that the accounts and budgetary projections presented carry considerable uncertainties and are not sufficient for him to conclude that the agricultural element of the business, in its present form, gives rise to a need for someone to live permanently on site.

11. The Secretary of State also agrees (IR30) that this negative conclusion is compounded by the lack of certainty over the landholding. As indicated in paragraph 4 above, the farm tenancies have been renewed, but only for a period of 12 months (to 25 December 2015); and the Secretary of State agrees with the Inspector that the fact that the Appellant has occupied the land for a long period to date does not necessarily mean that he will be able to do so into the future. Although the enforcement issues referred to by the Inspector at IR30 have apparently been resolved, the Secretary of State considers that there could be many other external reasons why the tenancies might not be renewed in the future. Furthermore, even if the Appellant could find other suitable land to rent, as suggested at the Inquiry, this would inevitably be further way from the dwelling which forms the subject of this appeal than his current holdings, and so would not represent the very special circumstances of immediate access to his stock on which the arguments for its retention are based.

12. Overall, the Secretary of State concludes that whilst there is a present functional need for a full time presence, the case for a person to live permanently on the site has not been made out, as set out in the first bullet of paragraph 55 of the Framework. In light of this conclusion and having carefully considered the appellant's case for retention of the farmhouse, including the best interests of the appellant's son as a primary consideration, the Secretary of State concludes no very special circumstances exist to justify the harm to the Green Belt and any other harm caused by the dwelling which would justify a grant of planning permission on a permanent basis.

**Scope for temporary consent and alternatives to the unauthorised dwelling**

13. The Secretary of State has given very careful consideration to the Inspector's arguments at IR31-34 with regard to the need for temporary provision and whether that would meet the strict test of very special circumstances. The Secretary of State accepts (IR31) that the enterprise for which the residence is claimed to be required is a revival of an earlier operation, but he takes the view that not only does that mean that the dwelling was constructed before any need could have arisen but also that, given that the Appellant has had previous experience of running a similar operation, he should by now have been able to make a clearer case for the essential need to live permanently at or near the site. Furthermore, while he recognises that the period for which the tenancies have recently been renewed are likely to be too short to facilitate the longer-term planning necessary to endeavour to demonstrate an essential need to live permanently, he has seen no evidence to convince him that the respective landlords might be prepared to make future renewals for longer periods.

14. The Secretary of State has considered the Inspector's discussion at IR35-42 and is aware (IR36) that the Appellant's son is living with him and his best interests are a primary consideration. These are factors that the Secretary of State has taken into account in favour of the appeal and he has considered whether a 3 years or a shorter period of time is justified in the circumstances of this case. The Secretary of State takes

the view that the Appellant has been aware of the potential need to find alternative accommodation since before he leased out Unit 7 on 1 May 2014 (IR41), and could at that time have made provision to use it for his own living accommodation. Alternatively, or in the meantime, as the Inspector recognises at IR35, Units 1 and 2 have and have had the benefit of a lawful development certificate for residential use since 1996. The Secretary of State therefore does not agree with the Inspector that a grant of planning permission for 3 years is necessary for the reasons he gives at IR 46; and nor is a shorter period justified. The Secretary of State considers that it his role as planning decision taker to ensure that any interference with any human rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. The Secretary of State has taken into account the implications of dismissing this appeal and is aware that the Council have obtained an injunction to secure removal of the dwelling which is held in abeyance pending a decision on this appeal. However, in light of the conclusions above, the harm to the Green Belt and any other harm is such that the dismissal of this appeal is a necessary and proportionate response.

**Conditions**

15. The Secretary of State has considered the proposed conditions set out in the Annex to the IR. He is satisfied that these are reasonable and necessary and meet the tests of the Framework and the guidance. However, he does not consider that they overcome his reasons for refusing the appeal.

**Obligation**

16. The Secretary of State has considered the Appellant's offer to remove the two remaining grain silos and/or to reduce the size of the western tower by removing the fourth bedroom, However, for the reasons given at IR34, the Secretary of State agrees with the Inspector that neither of these obligations is necessary to a grant of permission and that they are largely peripheral to the main issues in the appeal. The Secretary of State does not therefore consider that these provisions are sufficient to overcome his concerns with the proposed scheme as identified in this decision letter.

**Overall Conclusions**

17. Overall, on the basis of the evidence before him, the Secretary of State concludes that the appeal development constitutes inappropriate development in the Green Belt, which is by definition harmful to the Green Belt, and should not be approved except in very special circumstances. He gives substantial weight to the harm identified in paragraphs 8 and 14 above. The Secretary of State has carefully considered the appellant's case that the development is needed by an agricultural worker in connection with the current beef farming enterprise as a special circumstance under paragraph 55 of the Framework but, for the reasons given above, concludes that whilst there is a present functional need for a full time presence, the case for a person to live permanently on the site has not been made out and the harm caused by this development is not clearly outweighed by other considerations as set out in paragraph 88 of the Framework. Nor, in the particular circumstances of this case with regard to lack of long-term security of tenure for the land holdings required to rear the cattle, and in light of the extent and weight of harm in this case, does he consider that the case for a temporary planning permission for the retention of the farmhouse has been made out whether for three years or for a shorter period of time. Accordingly, the Secretary of State concludes that there are no very special circumstances justifying the harm to the Green Belt and any other harm

caused by the dwelling which would justifying granting planning permission in this case whether permanently or on a temporary basis.

## Formal Decision

18. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses your client's application for the retention of a farmhouse for an agricultural worker, together with retention of conservatory, fish pond, patio and extended patio, hardstanding, walls and steps, and proposed residential garden to serve the dwelling in accordance with application Ref: 14/00055/RET dated 13 January 2014.

## Right to challenge the decision

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

20. A copy of this letter has been sent to the Council. A notification e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

# Report to the Secretary of State for Communities and Local Government

**by R O Evans BA(Hons) Solicitor MRTPI**

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

**Date: 9 February 2015**

**Town and Country Planning Act 1990**

**Appeal by Mr Robert Fidler**

**Reigate & Banstead Borough Council**

Inquiry held on 4 November 2014

Honeycrock Farm, Axes Lane, Redhill, Surrey, RH1 5QL

File Ref(s): APP/L3625/A/14/2220464

**File Ref: APP/L3625/A/14/2220464**
**Honeycrock Farm, Axes Lane, Redhill, Surrey, RH1 5QL**

- 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 Fidler against the decision of Reigate & Banstead Borough Council.
- The application Ref 14/0055/RET, dated 13 January 2014, was refused by notice dated 14 April 2014.
- The development proposed is the retention of farmhouse for agricultural worker, together with retention of conservatory, fish pond, patio and extended patio, hardstanding, walls and steps, and proposed residential garden to serve the dwelling.
- The inquiry was held on 4, 5 and 13 November 2014. The site visit also took place on 13 November 2014.

**Summary of Recommendation:** That permission be granted, limited to a maximum period of 3 years and subject to other conditions.

## Procedural Matters

1. The above description of the development is as amended by the Council, and as set out in the Statement of Common Ground. As the description implies, the appeal falls to be treated as one in relation to development already carried out.

2. The Appellant initially requested that the case proceed by way of a hearing. The Council considered an inquiry appropriate. The Planning Inspectorate's decision was, as above, for an inquiry. The Appellant's agent however had submitted a full Appeal Statement with Appendices (prefaced KCC). He later submitted his proof of evidence with a further set of appendices (prefaced TK). All the proofs of evidence, appendices and additional documents accompany this report. Also available are the written opening remarks and closing submissions. Any additional points made have been addressed as necessary in the text of the report. References are to numbered appendices unless stated otherwise.

3. Apart from preliminary matters, this report does not set out 'cases for the parties'. Instead it follows the format of a discussion of the evidence and issues, with conclusions on individual points along the way, followed by a final conclusion and recommendation, including conditions.

## The Appeal Site

4. Honeycrock Farm lies to the north of Axes Lane, to the east of the main built up area of Salfords. Land in the Appellant's ownership extends to some 6ha, including a series of yards and buildings with an access drive from Axes Lane. There is no dispute that the Appellant has also for many years rented and occupied a further 94ha or so of grassland and woodland, lying mostly to the north and east of the main complex[1]. At the time of the inquiry, that land was held on 2 Farm Business Tenancies expiring on 25 December 2014[2].

5. The access drive runs from the road for 100m or so before forking left into the main yard. To the south and west is a range of buildings known as Units 1-7, with Units 8 and 9 contained in some larger buildings to the east[3]. I do not need

[1] Plan KCC10
[2] AB8
[3] Plans KCC6 & 7

to go into the history of these buildings, save to say that they are all currently in lawful use for a range of commercial or light industrial uses, except for Units 1 and 2 which are in single residential use. I return to their possible significance for this appeal, and that of Unit 7, below.

6. The dwelling and associated development subject to this appeal lie on slightly lower ground to the north west[4]. On the eastern side of the yard there is a large general purpose agricultural building, with now a cattle shed and yard adjoining it erected following a grant of planning permission (P/12/01708/F) in March 2013[5]. The history of how the dwelling came into existence, and the planning history of the wider site, is well known to the parties, and indeed to some extent to others, albeit with differing perceptions of it[6]. I record simply that all of the development subject to this appeal is unauthorised. Together with a number of other matters, it was considered on appeal in 2008, the Inspector's dismissal itself being upheld on later appeals[7]. The Council have now obtained an injunction to secure removal of the dwelling, which is held in abeyance pending the outcome of this appeal[8]. While I shall refer to certain passages of the 2008 decision, this appeal has to be determined on its own merits and on the evidence presented.

## Planning Policy

7. The site and surrounding land lie within the Metropolitan Green Belt. Since the application was determined the Council have adopted a new Core Strategy, Policy CS3 of which maintains a presumption against inappropriate development in the Green Belt, except in very special circumstances. That reflects the continuing advice at paragraph 87 of the National Planning Policy Framework ("the NPPF") that inappropriate development is by definition harmful to the Green Belt and should not be approved except in "very special circumstances". It is common ground that the construction of a dwelling, even if to house an agricultural worker, would be an inappropriate development for Green Belt purposes. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm[9], is clearly outweighed by other considerations.

8. In addition to the major objective of assisting in the achievement of sustainable development, the NPPF expresses support for the rural economy and the promotion of agriculture. At paragraph 55, it also advises that isolated new homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. With the advice in PPG7 Annex A now withdrawn, there was less agreement between the parties over the approach to be taken to an application founded, as this one was agreed to be, on the need for a full time presence on the site of an agricultural worker, and indeed what difference if any there was between the 'special circumstances' test in paragraph 55 and that of 'very special circumstances' in paragraphs 87-88 of the NPPF.

[4] Plan KCC9 + photos included in TK's proof; AB1
[5] Plan KCC7, TK12
[6] TK proof section 6, TK8: AB3
[7] AB4 (Appeals 1-3 in particular)
[8] AB2
[9] As clarified by the Court of Appeal in *SSCLG & Othrs v Redhill Aerodrome Ltd [2014] EWCA Civ 1386*, and agreed by the parties, that includes 'non-Green Belt harm'.

9. As a preliminary comment, the fact that the parties prayed in aid a number of decisions they believed supported their respective positions only serves to emphasise the need for each case to be examined on its own merits and facts, even more so as the NPPF exception caters for 'rural workers' not just those involved in agriculture. In the absence of the former detailed provisions, the crucial phrases in paragraph 55 are to my mind "essential need" and "to live permanently." While not seeking to replicate the former advice, "essential need" can be seen as equating to a functional requirement, on whatever it might be founded, while to "live permanently" implies a requirement for the decision maker to be satisfied that the need to do so will or is likely to continue well into the future, or at the very least is capable of doing so. That must be especially so in the case of development that is inappropriate in principle in the Green Belt.

10. With the former tests no longer applicable, both parties at least accepted that financial considerations are capable of being material to the decision. I would go further to say that to support a permanent dwelling it is necessary to demonstrate economic sustainability but there is no set formula by which that might be shown. It might, for example, be demonstrated simply by the fact that an enterprise has persisted over a long period. In the case *of R (Embleton PC & Anr) v Northumberland CC (& Anr) [2013] EWHC 3631 (Admin)*[10], the Court was reviewing the grant of a temporary permission, where it follows from the above that it is the question of permanent residence that gives rise to the need to look longer term. The Court was thus only then concerned with the "essential need", but not whether it was "to live permanently" on the land.

11. Further, the site in *Embleton* was not in the Green Belt. While it may not be appropriate to apply the same forensic approach to policy wording as to statutory provisions, the addition of "very" in paragraph 88 not only follows long established principles but must surely impose a higher test to be met in the Green Belt than outside it. Part of the purpose of the NPPF was to reduce the volume of policy guidance and I need hardly say that its wording was carefully chosen. Again, it is not possible or necessarily desirable to try to prescribe exactly what is necessary to meet that higher test. It may well be, in any given case, that the evidence will be sufficient to meet both in any event, particularly, as above, in the light of the NPPF emphasis on supporting the rural economy and promoting agriculture.

**Main Issue**

12. In the present case the parties are agreed that the entirety of the development is inappropriate in principle in the Green Belt. I consider the main issue therefore to be whether, taking account of the harm to the Green Belt and any other harm, the very special circumstances necessary to justify first, the provision of a permanent dwelling, and second, if so, this dwelling, have been demonstrated. It was agreed, and I see no reason to demur, that the remaining ancillary development 'stands or falls' with the dwelling.

13. Much of the factual history given on the Appellant's behalf by his agent ("AK") was not disputed[11]. In brief summary, the Appellant took on the farm as a tenant in 1972. By the mid 1990s his holding had increased to about 280ha, as a

[10] TK11
[11] TK7

mixed farm with a herd of beef cattle and arable production. He bought the land he now owns in 1985 but dwellings associated with it were sold separately. The beef enterprise was abandoned following the incidence of BSE[12] in the late 1980s. He lost some of the land he had farmed at Redhill aerodrome in or shortly after 1995, causing a change in the management of the land retained. In the early 2000s about 30ha was put into woodland, leaving about 60ha of grassland, which remains the position today.

**Harm to the Green Belt / Other Harm**

14. Whatever the extent of agricultural activities in the mid-2000s however, the Inspector found "little evidence" of it in 2008[13] and it was not then put forward as justification for the dwelling, nor indeed in relation to the proposed residential use of Unit 7 in 2007. I do not need to go over the history of the appeal building in order to assess its impact. It is of individual design, the front part of it being gable ended and clad in brick at ground floor level, with 3 large 'half timbered' dormers to main ridge level giving it a 'mock Tudor' appearance. The rear section is fully clad in brick, with 2 outer castellated 'towers' based around 2 former grain silos with tall, narrow windows. The central section rises to a ridge with a largely concealed glass dome on top and extensive fenestration serving the 'dining hall' which internally is partly open to the roof[14].

15. Though no attention was drawn to it at the inquiry, one of TK's exhibits[15] showed the Appellant's email address to include the term 'honeycrockcastle'. That may well be intended lightheartedly but it is not an inapt description of the presumably intended character of the building, albeit one with a mixture of styles. The Council's present estimate of its external floor area was put at 300m$^2$. The Inspector in 2008 calculated it at about 270m$^2$. That does not appear to include the single storey conservatory on the north western corner of the building. Also forming part of the development are the patio and walls extending out to the fish pond beyond them.

16. I cannot accept the assertion that the only increase in built form to be taken into account is the section of the building between the two former grain silos. As I was given to understand it, they were redundant structures from the days when the farm was both larger and mixed, just as are the 2 remaining ones. From the aerial photographs available, they were moved a short distance northwards into their present positions before being incorporated into the dwelling and their appearance radically altered. They have now a very different purpose and function and it is the development as a whole which has to be assessed.

17. The starting point remains as the Inspector found it in 2008. As he put it: "Although it (the dwelling) is not in a prominent position in terms of public viewpoints, it does sit at the top of a steep bank and can be seen from some distance to the north. I was not made aware of any footpaths from which it could be seen but it is nevertheless a dominant new building in the landscape which has resulted in a material loss of openness, which is the most important attribute of the Green Belt." Although he found the building's appearance "not unattractive", he also found there was "additional harm to the Green Belt in

[12] Bovine Spongiform Encephalopathy
[13] AB4, para 176
[14] Plan KCC9 & photos, as before
[15] TK3

terms of harm to amenity and loss of openness." The patio he found to have added "to the built development in the countryside … reducing the openness of the Green Belt." The conservatory was "parasitic upon the dwelling". By itself, it would be inappropriate in the Green Belt, causing "some harm" to its openness and visual amenities[16].

18. I might have described the house as being 'close to' the top of the bank rather than 'at' it but it is a minor point. Otherwise, apart from the passage of time, the Inspector's findings are as relevant now as they were in 2008 and I find no reason to depart from them. Further, while the house may sit partly or even wholly in what previously was an open yard, the aerial photographs suggest that it was in use for the parking mainly of vehicles and trailers[17], not a large 2 storey building with associated residential curtilage and other built development. I asked where such vehicles might now be parked but did not receive a positive answer. There may have been changes of occupier since 2008 but as seen in later aerial views[18], and as I saw, there has also been some spill over of such activities to the north and east of Units 9 and 10 so that I attach even less weight to this point than I might otherwise have done.

19. Seen from viewpoints to the north and east, mostly on lower land at present forming part of the holding, the building does indeed appear as an obtrusive and dominant feature in the landscape. Reflecting the previous Inspector's assessment of its visibility, I noted that long, wide views are possible to the north when standing outside on the patio. That equally means the house must be similarly visible from many viewpoints, particularly to the north and north east. Even if all private, a lack of public visibility does not make the house acceptable nor reduce its effect on 'openness'. The view of the building from Axes Lane at the time of my visit was partly obscured by the stack of bales in front of it, as seen in TK's photograph at paragraph 5.6 of his proof. Even so, it appears as an extension and consolidation of the buildings around the yard and thus fails to maintain openness or to assist in preventing encroachment into the countryside. As it stands, and taken as a whole, the development causes serious harm to the openness of the Green Belt and if only by its existence, detracts from the rural character and appearance of most of its surroundings.

**'Very Special Circumstances' & Agricultural Need**

20. ***'Essential Need'*** Turning then to the farming enterprise, it is said that the Appellant began to build up a beef herd again from about 2008. In October 2012 he made an application for retention of the dwelling, based on agricultural need. By then, the herd was said to consist of 27 Sussex cows and heifers, a further 24 heifers, 1 Sussex bull and 8 steers for finishing. The intention then was said to be to increase the breeding herd to about 60-70 animals. The Council sought opinions from 2 consultants who both concluded in similar terms on the functional aspects, namely that there was not then a full time labour requirement for a stockperson nor a need for a full time presence. Both also indicated however that that would be likely to change if the herd increased in size as intended[19].

[16] AB4, paras 175, 194, 199
[17] E.g. TK's proof, page 14
[18] TK's proof, page 15; AB1
[19] KCC6 & 7

21. Rather than appealing the Council's refusal of that application, the Appellant chose to continue building up the herd and later to make the present application. By the time it was made, TK reported that it consisted of 71 Sussex cows and in calf heifers, 29 calves, 2 working bulls, with 10 yearling stores just sold. There were also 20 ewes. By then too, the shed and yard permitted the previous March was in place. The Council consulted the same 2 consultants, who at that time reported similar stock figures as TK's. They respectively concluded, as anticipated, that "there is an essential need for one dwelling only" and that "there are now sufficient breeding cattle to warrant accommodation for a stockperson[20]." While the consultant who gave evidence for the Council (RL-H) expressed reservations over later stock numbers, he did not resile from the basic conclusion of a present functional need for a full time presence. As that is the considered view of 3 appropriately qualified professionals (including TK), I see no need to look beyond it.

22. ***'To Live Permanently'.*** As implied above however that is far from the end of the story. The next question is whether the 'essential need' is for that person to live permanently at the site, having regard to my comments above on the approach to it. As a preliminary comment, doubts were expressed about the Appellant's trading name as Waggoners Farm, and thus whether the accounts presented genuinely reflected activity at Honeycrock Farm. In the absence of any real evidence to the contrary however, and with the assertion of a historical connection with Waggoners Farm, I have no reason to doubt their veracity in this respect.

23. Though I do not have full details, the Appellant has plainly invested substantial sums in the enterprise in construction of the new shed and yard and in the acquisition of stock. That is indicative of longer term intentions but not conclusive of sustainability. I attach less weight to perceived discrepancies on the stock figures highlighted by RL-H than to some other aspects, not least as stock held from one given moment to another is likely to vary to some extent for a variety of reasons. The Appellant's wife was able to give some limited clarification over recent movements but neither she nor the Appellant were called as witnesses. There remains an element of doubt over the accuracy of some of the figures given, but as above, not sufficient to undermine the case on 'functional need'.

24. Looking next to the accounts and budgetary projections available[21], one does not need to be a farmer to understand that it takes time to build up a breeding herd to a point where a consistent year-on-year profit can be shown. It was accepted that to show viability, the minimum amount of such profit would need to be about £18000 per annum, reflecting current agricultural wage levels. That was just achieved (on the combined agriculture and forestry elements) in 2010 but the income then did not include any cattle sales. I note also that, for reasons not explained, the RPA payment for that year was more than double that in the 2 following years. There were sheep and cattle sales in 2011 of nearly £18000 but a profit only of some £8750, while in 2012 there was a loss of nearly £1500, with livestock sales of just over £12000 (shown on the 'full business' accounts at just under £11000).

[20] KCC11 & 12
[21] KCC15 & 16, Inquiry Doc 2; RLH Additional Observations

25. Livestock sales in 2013, again as shown in the 'full business' accounts, raised only £4750. That figure has to be seen in the context of farming costs in the 2 previous years of between £29000 and nearly £33500, albeit that these included substantial livestock purchases. It is reasonable to expect greater agricultural profits as the herd grows and sales increase. Preliminary accounts for the 10 months to 31 October 2014 show a profit of nearly £35000. It would be rash to attach much weight to these accounts however, where the end of year figures may change considerably and many of the potential expense categories are shown as £0.

26. TK's earlier projections, based on an average of 3 systems of management, produced a level of profit of a little over £22000 per annum. The income shown included incidentally the continuing forestry payment of £6900, which may be reasonably included as part of the agricultural assessment but which does not contribute to the 'functional need.' TK acknowledged that projections are no more than that. I acknowledge that the actual costs may be less in the future than his 'fixed costs' figure of £29,300, depending on livestock purchases and other factors.

27. More importantly however, all of TK's projections are based on animals being taken to finished weight rather than being sold as store cattle. Again, I acknowledge that farming practices may change for a number of reasons, including market conditions, the land available and its condition, and the availability or lack of it of other facilities such as the new cattle shed. TK did not regard this as a major issue, not least as in his view, the numbers of animals could be greater if they were not kept to full size. That may be true but does not fully address the difference in likely sale prices, based partly on those achieved so far, highlighted by R-HL, nor his assessment that there is "at the very least, no clear prospect of finishing any significant number of cattle on the farm, either indoors over the winter, or on grass over the summer"[22] as assumed in TK's budgets.

28. The reasons for that assessment were set out in R-HL's report[23]. They stemmed in part from a reported conversation with the Appellant himself on which TK was unable to comment. Whatever the Appellant's reasons for not attending the inquiry[24], it meant that neither this nor any other point could be explored with him in person. R-HL's conclusion, in March 2014, was that without the "finishing" margins, the budgets would "show insufficient income for viability.[25]" His later evidence at the inquiry was based on more up-to-date 'NIX' figures than AK had used and further supported that conclusion.

29. It is legitimate to have some regard to the 'full business' position, which appears to be healthy[26]. It is however the agricultural element, and specifically the beef cattle herd operation, that gives rise to the need for a 24 hour presence. It is thus the agricultural part of the business which must be shown to be financially sustainable or the need to live permanently on the site will not have been made out. If that were not so, the exception made for rural workers' dwellings would be open to considerable abuse. Even assuming the continuance of the land

[22] RLH01, page 4
[23] RLH01
[24] Statement, Mrs L Fidler
[25] ibid
[26] Inquiry Doc 2

holding, the accounts and budgetary projections presented carry considerable uncertainties and are not sufficient to enable me to conclude that the agricultural element, in its present form, gives rise to a need for someone to live permanently on site.

30. That negative conclusion is only compounded by the lack of certainty over the landholding. With potential difficulties arising from the Appellant's alleged failure to comply with certain enforcement notices apparently resolved[27], there is now no reason to expect that the present farm tenancies will not be renewed. There is equally no reason to expect that this will be for any greater periods than the existing tenancies[28]. Just because the Appellant has occupied the land for a long period to date does not mean he or anyone else taking over the farm will be able to into the future. The Appellant might well be able to find other suitable land to rent, one potential offer having already been made to him[29], but this uncertainty has to be set against the proposal for a permanent dwelling where 'very special circumstances' have to be shown to justify it.

31. ***Need for Temporary Provision.*** Stepping back from the evidence for a moment, as implied above, I find no difficulty with the proposition that if the 'essential need to live permanently' is made out, that would be capable of constituting those very special circumstances, at least on the principle of provision of a dwelling. Unlike the former guidance, the NPPF is silent on the possibility of a temporary permission, but as in *Embleton*, that does not mean no such provision can ever be made. Where as here an enterprise is in its relatively early stages, albeit a revival of a previous operation, if the functional need exists, I see no reason why in principle some way of meeting that need temporarily should not be allowed for, to see if it is likely or going to become permanent.

32. Importantly, it was acknowledged in submissions for the Appellant that the case has to be approached as an application for a new dwelling, that is, as if the present house did not exist. Where the need 'to live permanently' has yet to be made out, but an essential functional need has been accepted, the question then becomes one of how that need can be met in the short term. With just that in mind, I asked for the parties' views on the possible grant of a temporary permission, notwithstanding the intended permanence of the present dwelling.

33. Before that however, the parties had agreed a form of condition to be imposed in the event of the appeal being allowed (and on the Council's part, on the basis that it did not overcome their objections) that would require the dwelling to be demolished if the cattle farming operation were to cease for a period of more than 12 months. While such a condition could be adequately defined (as indeed discussed at the inquiry), to grant a full permission on that basis would be to accept both that a permanent need for a dwelling (unless and until etc) has already been made out and just as significantly, that it should be met by this one. The logical extension of that is that the need for it would 'clearly outweigh' all the harm identified above.

34. For the reasons already given, a need for a permanent dwelling has not yet been made out. Had it been, and leaving aside the present building's design, it is

[27] TK2-4; AB8
[28] Given the date of termination (25 December 2014) it may be possible for the position to be confirmed post-inquiry.
[29] Inquiry Doc 2(2)

highly unlikely that permission would be granted for a house of this size with such extensive additional features in such a sensitive Green Belt location. It was said on the Appellant's behalf that the present house cost 'only' some £50,000 to build. No evidence was submitted in support of that and cost is but one factor. Some of the rooms may be modest in size but (other 'in principle' considerations aside), it is the size and position of the building and the extensive ancillary development which gives rise to the objection. The Appellant also offered an undertaking to remove the remaining two grain silos and/or to reduce the size of the western 'tower' by removing the fourth bedroom. The former are outside the defined curtilage in the application plans, are partly shielded from view and in any event are agricultural structures of a type to be expected on a farm, however unsightly. If they are redundant, there is nothing to prevent their removal with or without permission for the house. Reducing the size of one of the towers would make only a marginal difference to the building's visual impact and even less in terms of the openness of the Green Belt. It would still occupy the same footprint in the same position. I do not therefore consider either obligation necessary to a grant of permission, indeed consider them largely peripheral to the main issues in the appeal. Little if any weight therefore attaches to them.

35. ***Alternatives to the Unauthorised Dwelling.*** Returning thus to the accepted functional need, and on the premise that the present building does not exist, one is drawn to the question of whether that need can be met by another dwelling or other building on the land. Units 1 and 2 have the benefit of a lawful development certificate for residential use, granted in 1996. They stand at the southern end of a row of single storey, terraced garage style buildings, while those at the northern end appear to have been extended and/or adapted for other purposes, such as car repairs and spray painting[30]. No direct view to the cattle shed or yard is possible but on the Appellant's own evidence, that has not prevented occupation as an agricultural worker's accommodation in the past[31]. It is the 'speed of response' to emergencies that as much as anything gives rise to the need for such accommodation. With modern monitoring methods, the location of the units I consider to be adequate in that respect, though not ideal.

36. No structural or survey evidence was presented but the main walls appear to be built in brick and/or blockwork, with corrugated sheet roofing. Unit 1 has a brick façade whereas what I assume are the original large garage doors have been retained at Unit 2. That reflects the fact that more than half of that unit is still in the form of a garage, whatever use may be made of it. Apart from a small terrace in front of Unit 1, the accommodation has no curtilage to speak of and gives onto a yard in commercial use. The Inspector in 2008 found the accommodation "untidy" but not unfit for habitation. He saw no reason why it could not be upgraded and occupied by the Appellant and his family "if need be." Those comments however were made in the context of a Human Rights argument involving the potential loss of a home and in the belief that the Appellant's son was not then living with him. On the undisputed evidence before me[32] that is now the case.

37. As I found them, the internal conditions can at best be described as very poor, considerably beyond mere untidiness. The rear wall is set on the site boundary,

[30] See plan KCC7, TK proof, photo 24 (p41) & elsewhere, TK9
[31] TK8
[32] Statement, Mrs L Fidler

with limited fenestration throughout and one room at least with none. In that respect, the photographs at TK9 give a misleading impression, at least in terms of daylight levels. Even with a false ceiling, the premises are dark, dank and I would expect difficult to keep warm in the winter months. TK's evidence (if second hand) was that they were occupied rent free by a single person who was formerly homeless, as indeed they were occupied by the Appellant himself when single. Their condition remains the Appellant's responsibility but they can hardly be regarded now as suitable family accommodation.

38. The Council refused permission in 2013 for a change to commercial use, but their planning witness was reluctant to give a direct answer to the question of whether, other things being equal, planning permission would be granted for them as a dwelling. I do not find that surprising. To expect the Appellant and his family to move into these units as they stand I consider would be unreasonable as well as causing the present occupier to move out. It may not be impossible to bring the premises up to a reasonable standard, but even as a temporary measure, that would clearly involve considerable expense if not rebuilding to a point itself requiring planning permission. I return to the point below.

39. Different considerations arise in relation to Unit 7. It is a detached building, built or clad in a combination of brick and stone with a high pitched roof containing one large and 2 small dormers at the front with 'half timbered' fascias. Although I understand it to have been one of the original farm buildings, it thus now has the appearance of a large cottage[33]. It stands opposite the entrance drive with views possible away from it also to the north. While again there is no structural evidence, it is clearly a more substantial building than Units 1 and 2 and is of a size that, subject to internal alterations, could easily provide a more than adequate family dwelling. Even TK accepted that the location would be acceptable for agricultural purposes if not as ideal, in his view, as that of the appeal building.

40. There is no dispute that the unit's current lawful use is for commercial purposes. The Council suggested permitted development rights may exist to change its use from offices to a dwelling but the point was not fully explored and is not one that can be formally determined in this appeal. Both the Council, and the Inspector in 2008, have declined to give permission for its conversion to a dwelling. No agricultural justification for that use has been put forward in the past however. The Inspector was also concerned about the location so close to some of the other units in use for purposes such as car repairs. This he considered made it a "highly unsuitable" location to be permitting residential use. Similar comments could be made in relation to Units 1 and 2.

41. That said, to have sought residential use of Unit 7 in the past the Appellant was presumably willing to address that last aspect in some way, at least to his own satisfaction. The full sequence of events since 2008 is not clear on the evidence, but not altogether surprisingly, in the light of the earlier refusals, the building has since been let for use as a film studio and store rooms with ancillary office, including a rent free period to enable 'conversions' to be made to it. That lease[34] was only entered into however from 1 May 2014 and thus some 18 months or

[33] Plan KCC 7 & TK10
[34] Inquiry Doc 4

more after the Appellant first decided to seek permission for a dwelling on agricultural grounds. Unwittingly or not, the Appellant has effectively removed the building from the equation for the time being but on the face of it, only for the 2 year period of the lease.

42. To summarise, Unit 7 is not at present a dwelling, is likely to need a separate permission to become one and is subject to a 2 year commercial lease. It is thus neither available nor capable of providing temporary residential accommodation at present. Looking longer term, to overcome the Inspector's concerns would probably involve the loss of one or two of the other units. Removal of the remaining redundant grain silos could also assist in the creation of a residential curtilage. A range of considerations, including the financial implications, might come into play if it were to be considered as a permanent alternative. They however would be for another day where the present issue is of how to meet the 'essential need' temporarily.

**Conclusions**

43. To return to that question therefore, it follows from the above that I accept that, as at the date of the inquiry, there was no suitable alternative accommodation available on the farm. Since I am not satisfied of the need for a permanent dwelling, it also follows, at the least, that the harm caused by this development is not 'clearly outweighed' by other considerations and therefore that the 'very special circumstances' necessary for a permanent permission, even with the condition offered, do not yet exist, if they ever will.

44. At the same time, there is a present and agreed functional need. The alternatives are thus either to bring Units 1 and 2 up to a reasonable standard or to grant a temporary permission for the unauthorised dwelling. The Council were opposed to the latter. Certainly, the impact of the development can be and has been ascertained; there is no need for a trial run in that sense. There is a need however to see if the enterprise will give rise to a permanent need in the future. If that judgment were reached, it was said for the Appellant that a temporary permission would be a pragmatic way forward.

45. I am hampered by a lack of full evidence on the condition of Units 1 and 2 but even to make them temporarily suitable as family accommodation is likely to involve significant if not substantial expense[35]. It may also require the installation of monitoring systems. Even if a permanent need comes to be demonstrated in the future, Units 1 and 2 are very unlikely to be able to provide satisfactory permanent accommodation so expense made now on their refurbishment and improvement may well be wasted in the longer term. What effect that might have on the financial sustainability of the enterprise, or on the possible later conversion of unit 7, is impossible to say.

46. On the other hand, the house may be unauthorised but certainly exists as a question of fact, the Appellant having now lived in it for a number of years. I have already concluded on the harm it causes, above. That would not be reduced by a temporary permission but would be curtailed by one (unless made permanent later). While acknowledging both the harm and the history of the case, I consider a temporary permission would: firstly, give the Appellant time to

[35] Cf paras 36-37, above

demonstrate, if he is able to, a need for a permanent dwelling; secondly, provide a means of meeting the agreed 'essential need' temporarily at the least expense; and thirdly, and in part because of that but without prejudging any future application, enable full consideration of the conversion of Unit 7 if that permanent need is made out. I thus make that my recommendation.

47. If that recommendation is accepted, a period of 3 years was suggested and I agree that would be an appropriate time in all the circumstances. There is also the possibility of the cattle farming operation ceasing within that period, or dropping to a level where there could no longer be said to be a functional need for a full time presence. I therefore recommend also adapting the condition suggested by the parties, as below, to take account of that eventuality. Other conditions including withdrawal of permitted development rights, were all but agreed and I accept the need for them.

48. Further, if my recommendation is accepted, it may be appropriate to record that the Appellant should be under no illusions that a temporary grant of permission now will necessarily lead to a permanent permission for the present building in the future. Even if a permanent need is then demonstrated, the development collectively remains a source of substantial harm to the Green Belt where other suitable alternatives may by then be available.

**Recommendation**

49. I recommend that the appeal be allowed, and planning permission be granted for a temporary period of three years, subject to the conditions set out in the Annex below.

*R O Evans*

Inspector

## Annex - Conditions

1) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development falling under Classes A, B, C, D and E of Schedule 2 to that Order shall be carried out.

3) The occupation of the dwelling shall cease within 3 years of the date of this permission. Thereafter and within 6 months of the cessation of residential occupation or the expiry of the above period, the dwelling shall be demolished and all resultant material removed from the application site.

4) If within the period of 3 years specified in Condition 3 above, the cattle farming operation ceases permanently (taken as having ceased for a period in excess of 12 months and/or if the breeding herd drops below 50 animals over such a period) then the residential use shall cease. Thereafter and within 6 months of the cessation of residential occupation or the expiry of the 12 month period, the dwelling shall be demolished and all resultant material removed from the application site.

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr S Whale | Of Counsel, instructed by the Solicitor to the Council |
| He called: | |
| Mr R Lloyd-Hughes BSc(Hons) MRICS | Agricultural Surveyor & Consultant |
| Mr A Benson MSc MRTPI | Planning Officer |

FOR THE APPELLANT:

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|---|---|
| Miss R Clutten | Of Counsel, instructed by Mr A Kernon |
| She called: | |
| Mr A Kernon BSc(Hons) MRICS FBIAC | Rural Chartered Surveyor & Agricultural Consultant |

INTERESTED PERSONS

| | |
|---|---|
| Mrs L Fidler | The Appellant's Wife. |

## PROOFS, EXHIBITS & STATEMENTS

Proof & Further Observations, Mr R Lloyd-Hughes
Exhibits RLH 01-03
Proof, Mr A Benson
Exhibits AB1-8
Appeal Statement, Mr A Kernon
Exhibits KCC1-16
Proof, Mr A Kernon
Exhibits TK1-13
Statement, Mrs L Fidler
Statement of Common Ground

## DOCUMENTS PRESENTED AT THE INQUIRY

1. Letter, Mr M Weekes, 04/11/14
2. Financial Update & related accounts, 03/11/14
3. Copy Accounts Clarkco Ltd
4. Copy Lease 01/05/14
5. Appellant's Unilateral Undertaking

Department for Communities and Local Government

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

**SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

**Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

**SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

**SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.