

UTT/13/0209/FUL (Wimbish)

(Call-in request by Councillor Perry if recommended for refusal in view of the planning history of the site and impact on the community)

PROPOSAL: Proposed erection of dwelling upon completion of a six year stud farm viability test for permanent accommodation and extension of time limit for use of caravan as temporary accommodation while dwelling is being constructed.

LOCATION: Home Pasture Stud, Top Road, Wimbish.

APPLICANT: Mr & Mrs L R Eyers.

GRID REFERENCE: TL 235 - 380

EXPIRY DATE: 27 March 2013.

CASE OFFICER: Mr C Theobald

1.0 NOTATION

1.1 Outside Development Limits.

2.0 DESCRIPTION OF SITE

2.1 The site is situated within a rural location on the south side of Top Road at the junction with Lower Green Lane and comprises a small commercial stud on former agricultural land for the keeping and breeding of Lipizzaner horses on a site area comprising 1.5 ha (3.72 acres). The site is generally flat across the site with a gentle slope north-south down from the road and is enclosed by boundary hedgerow. Various timber-framed stable buildings and associated structures exist at the site, whilst the majority of the site is set to enclosed paddocks. A caravan is stationed to the rear of the stable complex in which the applicants currently reside as temporary living accommodation. A farmhouse and smallholding exists to the immediate east of the site, whilst further dwellings exist to the west.

3.0 PROPOSAL

3.1 This application relates to the erection of a three bedroomed detached dwelling to be occupied by the applicants following the completion of a six year stud farm viability test and extension of time limit for use of the caravan as temporary accommodation whilst the dwelling is being constructed.

3.2 The proposed dwelling would be two storey in height of L shaped plan form and of local vernacular style of exposed brick and oak frame with a plain tiled roof incorporating various gabled elements and Tudor style chimneys to be erected close to the northern (top) boundary of the site. The dwelling would have a maximum width of 21 metres and overall depth of 12 metres and a height to the main ridge of 9 metres. The dwelling would be served by the existing vehicular access into the existing stud farm, although the submitted site layout drawing does not show any specific garaging for the dwelling.

4.0 APPLICANTS CASE

- 4.1 A detailed Design and Access Statement, including background to the application and justification statement accompanies the application in which the applicants sets out their supporting case for the proposed dwelling, including reference to a business plan and design principles for the proposed dwelling. Reference is made to the physical, social and economic contexts of the proposal and the wider benefits of the Lipizzaner stud enterprise as a whole at this location with reference to comments made by the Planning Inspector in the determination of planning application UTT/1003/05/FUL at appeal, reference to PPS7 Annexe A (as brought forward as consideration under the NPPF) and detailed design considerations.

5.0 RELEVANT SITE HISTORY

- 5.1 Permission granted on appeal in 2007 for change of use of land from recreational grazing to a commercial stud farm, siting of a temporary dwelling (caravan) to prove viability of future stud farm accommodation and extension to stables (UTT/1003/05/FUL). In her summing up of the appeal, the Planning Inspector made the following comments on the applicant's stud farm proposal:

"I am satisfied that the business is appropriate to this rural area, that a caravan is needed to enable it to develop and that the limited harmful visual impact of the caravan and extension to the stables would be ameliorated by the planting already undertaken and other planting shown. Subject to the conditions above the proposal would maintain environmental quality and countryside character here and in a very small way diversify the rural economy, as are the aims of the Development Plan and national policy. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed".

- 5.2 It was stated in the Inspector's decision letter from the applicants' own evidence that the number of horses anticipated for the proposal would be 8 adults with 4 foals at any one time where this number would be lower than would be expected on a more extensive grazing regime. As such, the Inspector concluded that there was a functional need for accommodation on what she described as a remote site to allow prompt care for any horses requiring attention at short notice, albeit that at that stage she was only considering a temporary caravan.
- 5.3 Several conditions were imposed on the appeal grant of permission, notably where Condition 2 stated that the "The use of the land for a temporary dwelling (caravan) hereby permitted shall be discontinued and the land restored to its former condition on or before 31 January 2013 in accordance with a scheme of work submitted to and approved in writing by the local planning authority" and where Condition 11 stated that "No part of the building extension hereby approved or other permanent buildings on the land shall be occupied as a dwelling".

6.0 POLICIES

6.1 National Policies

- National Planning Policy Framework (NPPF)

6.2 Uttlesford District Local Plan 2005

- ULP Policy S7 - The Countryside
- ULP Policy H12: Agricultural Workers Dwellings

- ULP Policy GEN1 - Access
- ULP Policy GEN2 - Design
- ULP Policy GEN8 - Vehicle parking standards

7.0 PARISH COUNCIL COMMENTS

7.1 Strong Objection for the following reasons:

- The application relates to an appeal decision on this site dated 26 January 2007 (reference: APP/C1570/A/05/1195748) which gave the applicants 6 years to prove this business viable in order to remain living in the caravan.
- The appraisal report from Rural Planning Limited reaches the firm conclusion that the business is not viable. We would note the following points:
 1. There is no suggestion that the accounts produced by the applicants have been prepared by or audited by a suitably qualified accountant.
 2. According to the report the accounts include an income of £6,000 from “horse painting”. We assume that this relates to the separate business of Mr Evers, who takes commissions for painting specialising in equestrian portraits (see his website www.lucianeyers.com). Such income is, of course, irrelevant in relation to this application.
 3. Again, according to the report, an income of £4,800 pa is projected for the sale of manure. The report states that sales to date have been between £0 and £581. Since local horse owners have great difficulty giving the manure away for free, this projection seems incredulous.
 4. The report also draws attention to the disparity between the “actual” figures and those projected in the previous forecast. We note that the only year showing a profit is 2011/12 with a net income of £2,551. The previous business plan showed a net profit of £43,952 for the year.
- We would also make the point that in the appeal decision the Inspector stated that *“the caravan and the comings and goings associated with it would be alien in the countryside and harmful to its open character”* (paragraph 17). It would seem that the erection of a large house on the field would be even more damaging.

8.0 CONSULTATIONS

Rural Planning Limited (external planning consultant):

8.1 (See detailed scheme appraisal and conclusions of the proposed permanent dwelling with accompanying financial spreadsheet attached to the end of this committee report where the proposal has been assessed against the functional need and financial soundness requirements of “Annex A” in relation to agricultural (equine) related proposals. The report concludes as follows:

“For the reasons outlined above, I do not consider the proposed dwelling meets the relevant tests of essential need for a permanent rural worker’s dwelling, either in functional terms having regard to its size, or in financial terms having regard to the submitted income and profit/loss figures, and the need to support an adequate livelihood and the cost of the dwelling”.

Veolia Water

8.2 Comments not received.

Anglian Water

8.3 Comments not received.

9.0 REPRESENTATIONS

9.1 2 representations received. Notification period expired 21 February 2013.

3 Rayments Cottages, Top Road, Wimbish, CB10 2XN

- 1. Appeal Decision APP/C1570/A/05/1195748
We would question the Council's decision to validate the current application on the basis of the applicants' compliance with the formal conditions of the appeal decision, namely:
Condition 2: Has the council properly considered whether the applicant has fully complied with condition 2 given that the period allowed for use of land for a caravan has now expired? Should the council be requiring the removal of the caravan before any further planning applications are considered?
Condition 4: Is the applicant in breach of this condition having persistently allowed more than one person to occupy the temporary dwelling for the past 6 years?
Condition 11: Is the council satisfied that this condition has been consistently complied with?
We would suggest that there is sufficient evidence available to the council to contend that the applicant is in breach of (at least) these conditions of the appeal decision and that the remedies available to the council in respect of the existing permission should be applied before any further applications are considered.
- 2. Current Application
If the council's conclusion is that the current application is valid then we would ask the council to consider the following:
 - i.* Given that the overriding basis of the appeal decision was to grant the applicant sufficient time (until 31/1/2013) to prove the "viability of the future stud farm" we would suggest that the applicant should be required to prove this to the council's satisfaction before any application for any further extension of the current permission is considered. If not, the council will surely require immediate enforcement of condition 2 of the appeal decision.
The Design & Access Statement supplied refers to Supporting Information Ref 2a Supporting Accounts and Ref 2b Build Costs, which we assume provides the business case justification for Home Pasture Stud. We have found that this information has not been provided within the documentation available to us. We anticipate that the council has access to this information and will seek independent professional advice (rather than relying on the applicants' accountant's advice, on which the previous appeal inspector relied (ref para 28 of the appeal decision), and that there is a strict correlation made between the business plan originally submitted and actual performance (including verified proof of transactions of income and expenditure) in order for the council to reach a considered opinion on the viability of the business.
We also believe that the council should, in determining this application, consider for how long Mr Eyers "other employment income" should be allowed as a material consideration in the viability of the stud business.
 - ii.* Subsidiary to the above principal consideration we refer to para 32 of the appeal decision which states that provided the business has been shown to be well established, any house approved should be "on a scale commensurate with the income generated". We expect that the council will also seek independent professional advice on this point. In our opinion, based on the running costs of our home, the proposed levels of income suggested for Home Pasture Stud could not

possibly support the combined running and maintenance costs of the new house currently proposed as well as the existing buildings.

iii. As close neighbours we have allowed Mr Evers the time to prove the success of his enterprise and have made no complaints to date. However, we do feel that he does not operate in the best interests of our community, that his property is not maintained to acceptable standards and that the existing unfinished building work represents a blot on the local landscape.

iv. On the basis of these comments we would ask the Council to determine against this application

"Joe on the Donkey", Lower Green, Lower Green Lane, Wimbish, CB10 2XH

- The previous appeal effectively provided the applicants with a right to place a caravan at the site as a temporary dwelling for a period of 6 years to give the new business a "trial run" (para 18 of the appeal decision). That period has now expired and the applicant is now required to remove the caravan.
- There is no evidence that the stud business is in any sense a viable commercial enterprise. In the absence of published accounts, we can only rely upon personal observations over the last 6 years. Those observations are of a poorly managed site in which little investment has been made and for which there is no sign of any realistic commercial activity at all.
- The question of the ultimate purpose of the current application was directly addressed in the previous appeal decision where it was stated that *"There is a firm view amongst some objectors that this proposal is part of a long game aimed at building a house on the site or converting the oak framed stables to a dwelling if the business fails. On the first, it would be necessary to show the business is well established and that the house is on a scale commensurate with the income generated. On the second, I do not think that Mr & Mrs Evers intend their business to fail. Both are ultimately for the Local Planning Authority to decide should the circumstances arise"*.
- As the applicants are not alleging that their business has failed, it is incumbent upon the applicant to prove that the business is indeed well established in order for permission to be granted for any permanent dwelling. The applicant has single handedly failed to do so and all the evidence is to the contrary. Therefore, on the rationale of the appeal decision notice there is no basis for permission to be granted for a permanent dwelling at all. Even if there were, any such evidence (which there is not), the [business] plan submitted is clearly not commensurate with the income generated. A house that would cost several hundred thousand pounds to build cannot be commensurate with what is at best a subsistence business. This only serves to highlight that the application is wholly misconceived and once again provides evidence of the long game referred to in the appeal decision.

10.0 APPRAISAL

10.1 The relevant issues to consider in the determination of this application are:

- A Whether the proposal meets the functional and financial tests on essential need to justify the granting of a permanent dwelling / continued siting of temporary caravan for residential occupation (NPPF, Annex A and ULP Policy H12);**
- B Impact upon the countryside / Design (ULP Policies S7 and GEN2);**
- C Whether access arrangements would be satisfactory (ULP Policy GEN1);**
- D Whether the proposal would be harmful to protected species (ULP Policy GEN7).**

A Whether the proposal meets the functional and financial tests on essential need to justify the granting of a permanent dwelling / continued siting of temporary caravan for residential occupation (NPPF, Annex A and ULP Policy H12).

- 10.2 The principal planning consideration to be addressed for this proposal is whether the applicants are able to demonstrate that the Lipizzaner stud business being run from the site is now sufficiently commercially viable six years on since the grant of planning permission for the stud farm business on appeal in 2007 to justify a grant of permission for a permanent dwelling on this site and for the extension of time limit for the continued siting of the caravan used as temporary living accommodation by the applicants when assessed against the functional and financial tests as set out in Annex A of the former PPS7 as broadly carried forward by the National Planning Policy Framework (NPPF) which has replaced PPS1 (Delivering Sustainable Development) and PPS7 (Sustainable Development in Rural Areas).
- 10.3 The NPPF itself has limited guidance on the issue of rural workers' dwellings where it states that LPA's should avoid granting new isolated homes in the countryside unless there are special reasons in doing so, i.e, "the essential need for a rural worker to live permanently at or near their place of work in the countryside". In the absence of any detailed national policy guidance, the advice contained within Annex A of replaced PPS7 relating to rural workers dwellings is still considered relevant and the thrust of this policy advice is reflected within ULP Policy H12 of the Council's adopted local plan. Whilst the current local plan does not have a specific policy relating to equine related uses where Policy H12 refers primarily to agricultural workers dwellings, this policy is also equally relevant to equine related establishments, where dwelling proposals are put forward on the basis of essential need to live at the site, such as has been put forward with the applicant's own dwelling proposal. ULP Policy H12 states that new dwellings for rural workers may be permitted if a) it can be demonstrated that there is an essential need for someone to live permanently on site to provide essential care to animals or processes at short notice and b) that the scale of the proposed dwelling relates to the needs of the enterprise.
- 10.4 The applicants have submitted a business plan with their application showing how their stud business has performed since the 2007 appeal. This can be compared with their original 2005 business plan, the details of which can be read as an appendix sheet attached to the appraisal report prepared by the Council's rural planning consultant, Rural Planning Limited of the applicants' proposal. The report provides a detailed analysis of the applicants' trading figures based upon their own accounts where it concludes at page 4 of the appraisal report that;
- "For the reasons outlined above, I do not consider the proposed dwelling meets the relevant tests of essential need for a permanent rural worker's dwelling, either in functional terms having regard to its size, or in financial terms having regard to the submitted income and profit/loss figures, and the need to support an adequate livelihood and the cost of the dwelling".*
- 10.5 In assessing the applicants' financial business case in more detail, it is stated within the appraisal that the proposed dwelling would represent a substantial traditional building that is estimated by the applicants' own figures to cost just short of £200,000 to construct. It is noted that the applicants now suggest that the proposed permanent dwelling would be to support the applicants' equestrian business *and* the applicants' separate publishing business and it is remarked from this that this separate business should not be included where it is the equestrian business alone which would warrant

a potential need for on-site accommodation and which was the subject of the original business plan. The appraisal further remarks of this that *"I see no reason in doing so. It is the equestrian business alone which would warrant a potential need for on-site accommodation and which was the subject of the original business plan that justified (on appeal) the granting of consent for temporary accommodation"*, adding *"The applicants suggest that the previous appeal decision supports the addition of outside income. However, the context in that regard was its assistance only for the period of establishing the stud"*.

Functional Need

- 10.6 The site visit on 12 February 2013 by the case officer for the current application proposal found that there were 12 horses being kept at the site comprising 2 stallions, 7 mares, 2 colts and a foal. From this, the consultancy report prepared by Rural Planning Limited makes the observation that the current number of horses being kept on the site appears to be broadly similar to the level of horses proposed in the applicant's original business plan where it was established by the Planning Inspector for the applicants' 2007 appeal that the site was remote and that there was a functional need for accommodation at the site to allow prompt care for any horses requiring attention at short notice (albeit at that stage the Inspector was only considering a temporary caravan).
- 10.7 Notwithstanding this, it is not the case that such accommodation must necessarily take the form of a permanent built dwelling in favour of the applicant's caravan currently at the site. In this respect, the report by Rural Planning Limited states that no functional need exists for the particularly large permanent dwelling that is currently proposed simply for care of these horses where UDC Policy H12 indicates that the scale of any such dwelling should be modest and related to the needs of the enterprise and where the more detailed Annex A criteria advises that dwellings that are unusually large in relation to the agricultural needs of the unit (or where these are unusually expensive to construct in relation to the income it can sustain in the long term) should not be permitted. In assessing the applicants' proposal against this criterion, the consultancy report concludes that;

"In my view, no cogent functional justification relating to the care needs of the horses has been submitted that would justify the overall size of the dwelling; the applicants' submissions in this regard include various personal considerations/requirements, but Annex A advises that it is the requirements of the enterprise rather than those of the owner or occupier that are relevant in determining the size of dwelling appropriate to a particular holding".

Financial soundness

- 10.8 The Annex A criteria requires that the unit and the agricultural activity concerned (or in the case of the current application the equine activity), have been established for at least three years, have been profitable for at least one, are currently financially sound, and have a clear prospect of remaining so. The annexe also states that new permanent accommodation cannot be justified on agricultural (equine) grounds unless the farming (equine) enterprise is economically viable
- 10.9 It is necessary in usual situations that a farm (or equestrian business) should have demonstrated sufficient returns after all the investment requirements of the business have been allowed for in order for financial soundness to be established in relation to a permanent dwelling proposal. The income derived from these returns should also be sufficient to support the cost of the dwelling. Trading accounts have been

submitted by the applicant for financial years 2010, 2011 and 2012 with an estimate for current year ending 5 April 2013, whilst projections have also been provided for the two years beyond that. In this respect, future year projections can be used as part of a business plan in support of an application for temporary accommodation whilst an enterprise is being developed or to support a clear prospect of an established successful enterprise remaining financially sound, although they are clearly not relevant in demonstrating current financial soundness. It should be noted that no balance sheets or capital accounts have been provided indicating what assets and liabilities are associated with the applicant's stud business and which are considered relevant to the financial soundness of the business, such as its annual outgoings and the ability to fund further investment.

- 10.10 The Council's consultancy report has summarised these trading figures as presented for the applicants' stud business alone up to the years 2012/13 and has compared these to the equivalent original (2005) applicant's business plan projections (see "Comparison Of 2005 Business Plan Projection to Actual Results" spreadsheet attached to the rear of the report attached to this committee report). Rural Planning Limited in analysing these figures has provided the following observation;

"It can be seen that the stud venture, which in reality is the only enterprise that would give rise to a case for the dwelling, has generated relatively little gross income over the last 3-4 years and has been effectively operating at a loss; in the one year (2011/12) where a small profit is shown, that result only appears to have arisen by the inclusion of "horse painting" and "horse feeding", which have not been explained, but which may well need to be discounted if they are not part of the approved and relevant core business, i.e., the breeding and sale of horses and the provision of stud services and associated liveries".

- 10.11 The report goes on to say that the input figures arising from the applicants' other publishing business, "E'mage", is not relevant for inclusion, and even if included up to current year's projection (to 2012/13), adding *"the net results would fall well short of providing anything like a livelihood or a capability of supporting the cost of the proposed dwelling"*. The report further remarks that the stud business in any event (including expected results for the current year) has failed to develop in the way originally anticipated and is not "currently financially sound" when judged against the above financial criteria and that it could be said that the stud business is not even operating "broadly on a subsistence basis" in the context of Para 8 of Annexe A given the various losses shown were this to be considered relevant. The report concludes from this analysis that the future years' projections for the stud business do not suggest with any degree of confidence that a viable stud enterprise is about to materialise, particularly when taking into account what appears to be highly inflated gross income sale figures for horse manure when compared to much lower recently quoted examples and the annual sale of the applicants' horse paintings where the predicted net profit including these elements would still be insufficient for a minimum livelihood. As such, the report is of the firm view that the financial test for the current application cannot be met.

- 10.12 The application also seeks an extension of time for the continued siting of the applicants' residential caravan for temporary accommodation for the duration of construction works for the dwelling. Given the above advice on the assessment of the permanent dwelling, it is considered that there is no policy justification for the applicants' caravan to remain on the site where the Planning Inspector for the 2007 appeal was mindful to grant planning permission for the temporary caravan on the reasonable expectation that the applicants would build up a sufficiently profitable commercial stud business at the site over a six year timeframe to have made a

dwelling on the site viable. As such, it is considered that it would not be appropriate to grant an extension of time limit on this basis as applied for.

B Impact upon the countryside / Design (ULP Policies S7 and GEN2)

10.13 The proposed dwelling would represent a building of character within the local landscape where it is stated in the application that its design concept has been borrowed from local historic vernacular architecture. Whilst the dwelling would have a slightly Tudoresque look and feel to it, it would nonetheless have good design proportions and design articulation between the principal and secondary building elements incorporating a dropped eaves line to the rear elevation. Whilst the dwelling would be positioned close to the road frontage where it would be visible above the existing hedge line to Top Road, the existing boundary hedging would help to mute the dwelling into its rural surroundings. In this respect, the proposal would be compliant with ULP Policy GEN2. However, full consideration must be given in this context to the conclusions of the Council's consultancy report (see above) as to whether the equine related dwelling is considered to be of an excessive scale and size when assessed against essential need and financial soundness of the applicants' business (see paragraph 10.9 above and below). Given the report conclusions, the dwelling is considered to be contrary to the countryside protection aims of ULP Policy S7.

C Whether access arrangements would be satisfactory (ULP Policy GEN1)

10.14 As previously mentioned, the dwelling would be served by the existing vehicular access into the stud site from Top Road, which is a Class 3 road and would not require an additional access point. Whilst ECC Highways have not been consulted on the proposal, site lines either side of the site are reasonably good in each direction on the outside of a gentle bend where the Inspector for the 2007 appeal remarked that the use of the site as a stud would not give rise to a highway hazard at this location. No highway objections are therefore raised to the proposal under ULP Policy GEN1. Whilst parking is not specifically shown, there would be sufficient land within the application site or on adjacent land pertaining to the stud for resident and visitor parking to occur.

D Whether the proposal would be harmful to protected species (ULP Policy GEN7).

10.15 The land upon which the dwelling would be sited currently comprises perimeter land to horse paddocks behind the front site boundary of the site and appears to be regularly used in association with the equine activities run from the site. Whilst an ecology report has not specifically been submitted with the application, it is considered in view of the condition and regular usage of the land that it is very unlikely to contain any ecology or bio-diversity value. The frontage hedgerow was planted by the applicants some years ago, which has now become fairly established, and could contain nesting birds, although the proposal is considered to comply with ULP Policy GEN7.

11.0 CONCLUSION

11.1 The following is a summary of the main reasons for the recommendation:

- The proposed dwelling would not meet the relevant tests of essential need for a permanent rural worker's dwelling under Annexe A and ULP Policy H12, either functionally having regard to its size or financially having regard to the submitted

income and profit/loss figures, and the need to support an adequate livelihood and the cost of the dwelling.

- In the absence of the proposed permanent dwelling meeting the functional and financial tests above, the proposal would be contrary to the countryside protection aims of ULP Policy S7 which seeks to protect the countryside for its own sake.
- It follows that the continued siting of the residential caravan on the site for residential use for the duration of dwelling construction works as a time extension cannot be justified where a functional and financial case for a permanent dwelling on the site has not been made out and where it has been demonstrated from the financial assessment that there is not a reasonable likelihood of the business attaining such levels of required profit in the near future based on projections.

RECOMMENDATION – REFUSAL

ULP Policy H12 of the Uttlesford Local Plan (adopted 2005) states that new dwellings for rural workers may be permitted if:

- a) it can be demonstrated that there is an essential need for someone to live permanently on site to provide essential care to animals or processes at short notice and
- b) that the scale of the proposed dwelling relates to the needs of the rural enterprise.

The applicant has failed to demonstrate that there is an essential functional need for an equine related dwelling at this site having regard to its size and where there is not sufficient clear indication of present and prospective financial soundness to support the provision of the proposed permanent dwelling. Furthermore, no justification exists on this basis for the continued siting of the temporary residential caravan on the site. The application is therefore be contrary to ULP Policy H12 and also contrary to ULP Policy S7 of the 2005 adopted local plan which states that the countryside will be protected for its own sake and that permission will only be granted for development that needs to take place there.
