



# Appeal Decision

Site visit made on 27 September 2007

by **George Mapson** Dip TP Dip LD MRTPI

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

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Decision date:  
8<sup>th</sup> October 2007

**Appeal Ref: APP/L2820/C/07/2035250**

**Land at Springfield Farm, Glendon Road, Rushton, Northamptonshire NN14 1QE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mark Hawkes against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2006/00218.
- The notice was issued on 11 December 2006.
- The breach of planning control as alleged in the notice is: *"Without planning permission: change of use of the land from agricultural use, to a mixed use for agriculture and the stationing of, and residential occupation of a caravan in the approximate position on the attached plan marked with a green cross; and the carrying out of works as part of the unauthorised change of use, namely the provision of timber decking, lighting and a timber fuel storage shed."*
- The requirements of the notice are: *"(1) Cease the use of the caravan for residential purposes; (2) Remove the caravan from the land; (Remove from the land all timber decking, storage shed, lighting and all personal items brought onto the land in connection with the unauthorised use."*
- The period for compliance with the requirement (1) is 1 week and with requirements (2) and (3) is 1 month.
- The appeal is proceeding on the ground (a) set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

## Application for costs

1. An application for costs was made by Kettering Borough Council against Mr Mark Hawkes. This application is the subject of a separate Decision.

## Decision

2. The appeal is dismissed and the enforcement notice is upheld. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Planning policy

3. The statutory development plan provides the essential framework for making planning decisions. Where it contains policies of relevance to a planning application or appeal, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The development plan includes the Local Plan for Kettering Borough (1995). Policy 7 seeks to protect the countryside from unwarranted development and Policy RA5 deals with permanent and temporary accommodation on farms.
5. These policies reflect the advice in Planning Policy Statement 7 [PPS7] (2004). The long-standing principles of satisfying both the *"functional"* and *"financial"* tests, which were set out in government guidance contained in PPG7 (1997), are carried through into Annex A of PPS7.

6. In the countryside new agricultural dwellings, whether temporary or permanent, are permitted only where a genuine case of need is made out which justifies an exception being made to the normal policy of exercising strict control over new development in the countryside. It is necessary to consider not only whether there is an essential need for a worker to live on or near the agricultural enterprise in order to run it efficiently but also the effect that the temporary or permanent dwelling would have on the character and appearance of the countryside. Personal preferences and circumstances, rather than genuine need, may be advanced but they rarely provide sound grounds for permitting agricultural dwellings.
7. PPS7, Annex A, paragraph 2, stresses the need to thoroughly scrutinise applications to ensure that abuses of the system are avoided. It points out that speculative proposals to introduce new farming activities should be treated with great caution, because although some may be genuine, the application may simply be an attempt to obtain a new house in the countryside. As regards temporary dwellings specifically, PPS7 advises that local planning authorities should not normally give temporary permissions in locations where they would not permit a permanent dwelling.

### **Main issues**

8. Having regard to those development plan policies and national planning guidance, the main issues in this appeal are as follows:
  1. Whether there is clear evidence of a firm intention and ability to develop the agricultural enterprise at Springfield Farm;
  2. Whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available on this site at most times;
  3. Whether there is clear evidence that the proposed enterprise has been planned on a sound financial basis;
  4. Whether the development harms the character and appearance of the countryside.

### **Reasons for decision**

*Issue 1: Is there clear evidence of a firm intention and ability to develop the agricultural enterprise at Springfield Farm?*

9. The appellant has indicated that eventually he wishes to live in a permanent dwelling on the land, but in the meantime the mobile home provides essential temporary living accommodation. His livestock herd amounts to a few calves at this stage (about 7) which are kept in a field, but no substantive evidence is proffered about his proposed farming enterprise on this newly created unit. The overall picture is not one that provides me with clear evidence of a firm intention and ability to develop an agricultural enterprise on this land.

*Issue 2: Is it essential for the proper functioning of the enterprise for one or more workers to be readily available on this site at most times?*

10. With the present stock numbers and with no livestock buildings on site, there is no clear-cut functional need for on-site accommodation and no cogent argument of such agricultural need has been advanced. Even if the stock numbers were to increase and the approved livestock building were to be constructed, it does not automatically follow that the worker's accommodation must be located immediately adjacent to it.

*Issue 3: Is there clear evidence that the proposed enterprise has been planned on a sound financial basis?*

11. With temporary dwellings for a new farming activity on a newly created or established unit there needs to be clear evidence that it is planned on a sound financial basis. There is no evidence to show that this enterprise has been planned at all or that it would be sustained for a reasonable period. Planning permission for the livestock building was granted in 2003, but no start has been made on that building, notwithstanding the unsubstantiated claims to the contrary by the appellant's agent. In these circumstances, there is no strong argument to justify allowing the appellant to continue to live on the site.

*Issue 4: Does the development harm the character and appearance of the countryside?*

12. The appeal site lies within an area of attractive rolling countryside. The double-unit mobile home has the appearance of a bungalow and has a wide area of timber decking around it, with a decorative pergola. It does not convey the impression of providing simple interim living accommodation whilst work to erect the livestock building is being carried out.
13. The mobile home is prominently sited on an elevated patch of ground near the top of a sweeping slope, rendering it conspicuous in the landscape. The ground level of the land on which it stands, and much of the immediate surroundings, has been raised using imported material. The planning history shows that the importation and spreading of some 23,000 cubic metres of material was unauthorised. It is the subject of an effective enforcement notice issued in 2000 by the Northamptonshire County Council, but to date the County Council has not enforced compliance with the notice.
14. The mobile home can be clearly seen from public vantage points along Rushton Road. It detracts from the attractive rural character and appearance of the area and thus conflicts with the objectives of the development plan and national planning guidance to safeguard the open countryside.

*Conclusions on the main issues*

15. The use of the land for the siting and residential use of the unauthorised mobile home (more specifically, its 'use for the purpose of human habitation'), and the accompanying operational development, fails to meet the tests of PPS7 Annex A and conflicts with the relevant policies of the development plan. Planning permission should therefore be refused unless there are material considerations to indicate that the appeal should be determined other than in accordance with the development plan.

*Material considerations*

16. The appellant claims that he still intends to erect the approved livestock building but he wants to be sure that he will be allowed to continue to live on the site before incurring any further expense. He could have started to build it in 2003 when permission was granted, but did not do so at the time because, he claims, the original building components were stolen from the land. His case is that he had to replace the components of the building and this has delayed the start.
17. At my site visit I saw some pieces of steel framework and other materials and was shown the approved site for the livestock building, but I saw no evidence that a start had been made.
18. The material considerations that have been advanced in support of the appellant's case relate to the need to provide surveillance of the property and cattle. In his submission, an on-site presence acts as a deterrent to theft. The appellant cites a number of thefts that have taken place and has submitted a list of police crime numbers that he says

relate to these incidents. The incidents are not detailed, however, so there is nothing to show the nature of the items that were allegedly stolen.

19. Whilst I can understand his predicament following that theft and his wish to watch over his cattle, I attach little weight to this argument as a material consideration that would outweigh the strong policy objections to the development. Moreover, no argument has been advanced to justify the retention of the decking and the other operational development that has been carried out.

*Overall conclusions*

20. I find no material considerations to justify the granting of a temporary planning permission for the continued use of land for the siting and residential occupation of this mobile home or for the accompanying operational development.
21. I have considered whether the harm that I have identified could be satisfactorily addressed by the imposition of planning conditions, but I have come to the view that it would not.
22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*George Mapson*

INSPECTOR



# Costs Decision

Site visit made on 27 September 2007

by **George Mapson** Dip TP Dip LD MRTPI

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

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Decision date:  
8<sup>th</sup> October 2007

**Costs application in relation to Appeal Ref: APP/L2820/C/07/2035250**

**Land at Springfield Farm, Glendon Road, Rushton, Northamptonshire NN14 1QE**

- The application is made under the Town and Country Planning Act 1990, sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Kettering Borough Council for a [partial] [full] award of costs against Mr Mark Hawkes.
- The appeal was against an enforcement notice alleging [brief details of allegation].

**Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.**

## The Submissions for Kettering Borough Council

1. The Council referred to Circular 8/95, Annexes 2 and 3 and asserted that the appellant had acted unreasonably in failing to comply with the general procedural requirements in appeal proceedings and in failing to substantiate his case. His unreasonable behaviour had caused the Council to incur unnecessary costs.
2. Annex 2 of the Circular deals with general procedural requirements in appeal proceedings. Paragraph 3 gives examples of what may be regarded as unreasonable behaviour and at sub-section (2) cites:  
*"...failing to provide the required information in support of an appeal; or refusing to discuss the appeal, or failing to respond to a planning contravention notice if this causes the authority to incur unnecessary expense in resisting a subsequent appeal."*
3. The appellant failed to supply details of any justification for the temporary dwelling on the land. He failed to respond to a planning contravention notice and human rights questionnaire. Despite the Council's letters and telephone calls to the appellant's agent, no information has been provided and no planning application for the development has been submitted. No information relating to agricultural justification has been submitted in support of his ground (a) appeal.
4. Annex 3 of the Circular gives examples of unreasonable behaviour relating to the substance of the case and paragraphs 1-6 deal specifically with awards of costs against appellants. Paragraph 3 states that where the development plan is material and there are no other material considerations, the applicant will risk an award of costs against him if he pursues the appeal but is unable to produce substantial evidence to support his contention that there are material considerations which would justify an exception to the policies in the development plan.
5. The Council's officers explained the relevant local and national planning policy to the appellant and his agent. The officers made it clear that siting a temporary dwelling on this land would only be considered acceptable if it could be demonstrated that there was sufficient agricultural or other justification for it. The appellant failed to put forward any good reasons that would justify an exception to these policies and

consequently, it follows that the ground (a) appeal can have no reasonable prospect of success.

6. The appellant's failure to supply information or any justification for the development prior to the appeal, and his failure to supply it as supporting evidence for the ground (a) appeal represent deliberately uncooperative behaviour, particularly as the Council had drawn his attention to the relevant issues and facts and he has had access to professional representation via his agent.

#### **The Response on behalf of Mr Mark Hawkes**

7. On behalf of the appellant, it was argued that to punish him with costs would be unreasonable.
8. When the appellant bought the site it already benefited from a grant of planning permission to construct a roadway to the back corner of the land to establish a small farm. He then obtained planning permission to build a calf rearing suite. Work has commenced on this project, but it has been hampered by thefts from the land, including the theft of the complete steel frame of the new building. The mobile home on this site is needed on the land to watch over the appellant's cattle and provide security.

#### **Conclusions**

9. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
10. An award of costs is not intended to be a punitive measure; there is no question of costs being awarded to punish the appellant. As the Circular makes clear, the availability of such awards is to bring a greater sense of discipline to the parties involved in planning proceedings.
11. In deciding whether behaviour is unreasonable, a factor to be taken into account is the extent to which the appellant obtained professional advice. In this case, the appellant was professionally represented and was fully informed by the Council of the strict controls that local and national policies impose on new residential development in the countryside. The Council's decision to issue the enforcement notice was expedient given the breach of planning control that had occurred.
12. The appellant and his agent failed to meet the normal procedural requirements for appeals. I appreciate that the theft of items from the land might have been a setback to the appellant's plans to develop a farming enterprise, but that does not explain his failure to apply for permission for the mobile home on the land; provide details of his proposed agricultural undertaking; respond to the planning contravention notice or to the human rights questionnaire; or respond to the Council's telephone calls or letters seeking information relating to his appeal. In the circumstances, the appellant's non-co-operative attitude and his disregard for the procedure rules amounted to unreasonable behavior and caused the Council to incur unnecessary expense.
13. The Circular explains that development that "*flies in the face*" of such policies, and which obviously has no reasonable prospect of success, will run the risk of an award of costs against those pursuing such development, depending on the circumstances. In this case, it should have been evident to the appellant and his agent that siting and occupying a mobile home on this land without any clear cut agricultural justification ran counter to development plan and national planning policies. Consequently, the appeal had little prospect of success. This factor, together with the appellant's failure to