



Appeal Decision

Site visit made on 25 September 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/D3830/W/20/3253594

Tremains Farm, Treemans Road, Horsted Keynes RH17 7EA

- 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 FJ Butler and Sons against the decision of Mid Sussex District Council.
 - The application Ref DM/19/4231, dated 4 October 2019, was refused by notice dated 6 March 2020.
 - The development proposed is construction of new cattle building, replacement feed clamps, new slurry lagoon, and replacement dirty water lagoon.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area, including the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB);
 - ii) whether the proposal would constitute 'major development' in the AONB; and
 - iii) if constituting major development, whether exceptional circumstances exist, and whether the proposed development would be in the public interest.

Reasons

- i) *Character and appearance*
3. The appeal site is within national landscape Character Area 122 "High Weald", regional Landscape Character Area HW1: High Weald, and District level Landscape Character Area 6 – High Weald. The AONB Management Plan (MP) identifies 5 defining components of character for the High Weald: geology, landform and water systems; settlement; routeways; woodland and field and heath.
 4. The key characteristics of the AONB and these landscape character areas include: a deeply incised, ridged and faulted landform, a predominantly grassland agricultural landscape typically used for livestock grazing, small and medium sized fields enclosed by a network of hedgerows and woodlands, an abundance of ancient woodland, dispersed historic settlement including high densities of isolated farmsteads, and medieval ridgetop villages connected by historic routeways, often sunken and enclosed by hedges. The AONB MP also identifies that the land-based

economy and related rural life underpin the observable character of the landscape of the AONB, while its other qualities include views, scenic beauty and relative tranquillity.

5. The existing farm complex is on higher ground than surrounding land, which falls away to a valley to the south and to Treemans Road. In the surrounding area narrow strips of woodland create a sense of enclosure around small groups of medium-sized fields, which are generally enclosed by hedges. Treemans Road is a sunken lane where it passes the existing farm complex, with high banks and mature trees and hedges alongside it. There is only scattered development in the area and the road is lightly trafficked, giving the area a sense of tranquillity. Consequently, the appeal site and surroundings are firmly characteristic of this landscape classification and the qualities that the AONB designation seeks to preserve and enhance.

Landscape impact

6. The existing farm buildings are of modern, utilitarian design and along with the slurry pit, sit partly on made-up ground. The landscape character of the existing farm complex therefore includes historic landform interventions which are not typical of the landform of the AONB. As such, it is of low landscape value. However, it is compact in nature and the existing bunds are relatively low, broadly continuing the hedgeline of the adjacent field. Existing trees and hedges also provide considerable screening of these features and the buildings. Therefore, the existing landform does not appear as a conspicuous artificial feature and the farm complex has a limited impact on the wider landscape.
7. Overhead power lines (OHL) through the appeal site are somewhat intrusive and degrade the quality of the landscape, however the remainder of the appeal site comprises open fields offering views out over the wider countryside, and is characteristic of the AONB. Consequently, overall the appeal site is of medium landscape value.
8. The proposed isolation building would maintain the existing agricultural character of the farm complex, as it would be of similar appearance to the existing buildings, sited close to them and at a similar ground level. The farm complex would therefore have a low susceptibility and sensitivity to such change. However, the proposed feed clamps, slurry and dirty water lagoons and associated bunds would be a new and large component within the landscape. As such the section of the appeal site south of the farm buildings would have a high susceptibility to change, and a high sensitivity to the type and scale of landform change proposed.
9. The proposal would involve cut and fill and the importation of approximately 68,000 cubic metres of material to create a platform for the proposed feed clamps and isolation building and the bunds around the slurry and dirty water lagoons. Ground levels would be raised by up to 8.25 metres, and the feed clamps would have 3m concrete panels around them, on top of this platform. The proposal would extend the yard and associated buildings significantly further south than at present and considerably increase the amount of hardstanding and enclosures. As such, the proposal would result in a moderate magnitude of change and slight adverse effects on the landscape character of the farm complex itself.
10. Slurry lagoons are not uncommon on dairy sites, and the natural landform has already been somewhat altered by the existing bund. However, the proposed bunds would be considerably taller and larger in scale than those around the existing slurry pit, and would introduce an extensive and obviously artificial landform into the more gentle natural slope of the existing fields. It would

therefore result in a significant and permanent change in the landform of the appeal site, and would not protect important landform features as sought by objective G2 of the AONB MP.

11. During construction this new landform would be particularly noticeable as bare earth surrounded by pasture. Even when grassed over, the steep sides of the bunds would reveal them as an obviously man-made and artificial feature. The extensive platform and substantial walls around the feed clamp would reinforce this artificial character. Consequently, even in the context of the existing agricultural development, the proposal would be a noticeable and detracting feature within the AONB landscape. Therefore, the magnitude of change for the land south of the farm buildings would be major, and would result in a substantial, adverse landscape effect.
12. The mature trees and hedges between the appeal site and Treemans Road create a strong tree line and enclosure to the road, and therefore make an important contribution to the character of the landscape. Three ancient/veteran trees are prominently sited in a gap in this treeline, and as such are conspicuous features in the landscape. Therefore, these trees and hedges are of high landscape value. As a sunken road, Treemans Road is an important and characteristic feature of the landscape and is therefore also of high value. As the road and the vegetation alongside it would not be altered by the proposal they would have a low susceptibility to change. Therefore, they would be of medium sensitivity overall.
13. Although Treemans Road is below the level of the neighbouring fields, travelling south along the road the difference in levels reduces and the gaps in the treeline allow parts of the site to be seen from the road. While the veteran trees would be retained, the proposed bunds would be directly behind them and would be only a few metres lower than the tops of the trees according to the tree heights given in the appellant's tree schedule. It would therefore form a prominent feature that would artificially raise the land level close to the road, affecting the landscape setting of the road and the trees along it. Consequently, the proposal would form a visible and recognisable new element within the existing landscape, although it would only be experienced for a relatively short time when passing along the road.
14. The proposed planting parallel with the road would comprise 9 trees and an area of shrubs in the existing gap in the treeline, and would not infill the areas around the veteran trees. Although relatively large trees are proposed they would still be significantly lower than the proposed bunds, and of limited depth and density. Accordingly, the proposed planting would provide limited screening of the proposed bunds, and minimal landscape enhancement.
15. Consequently, using paragraph 3.8 and Table 05 of the appellant's Landscape and Visual Impact Assessment (LVIA), I consider that there would be a moderate magnitude of effect to the area around the road and treeline and a moderate adverse landscape effect following completion of the scheme. I therefore find that there would be a greater landscape impact on Treemans Road than the LVIA identifies.
16. The undergrounding of a section of the OHL would be an improvement, however only a relatively short length would be affected and therefore the extent of the change to landscape character would be limited. Therefore, the magnitude of effect would be minor and it would result in a low beneficial landscape effect. The proposal would increase slurry and dirty water capacity, reducing the likelihood of overtopping or emergency removal during heavy rain and pollution to watercourses. This would support the aims of Objective G1 of the AONB MP in relation to water systems, resulting in a slight landscape benefit.

17. The LVIA suggests that the proposal would prevent rutting and poaching of the appeal site below the existing slurry lagoon, however this is not particularly evident from outside the site and as such does not appreciably harm the landscape character. The proposal would see much of that land covered by imported material and the cheese waste currently spread on it accommodated into the lagoon system. Therefore, it would result in a small positive contribution to protecting existing soils as encouraged by the AONB MP, and a low benefit to landscape character.

Visual impact

18. The visibility of the appeal site is constrained by local topography and woodland, however it can be seen from the public footpaths around the edge of the fields to the east of Treemans Road. In assessing the visual impact of the appeal proposal I have visited the viewpoints along those footpaths that are identified in the appellant's LVIA, as well as viewing the site from within the appellant's farm and from Treemans Road.
19. From viewpoints 1 and 2 in the LVIA, the proposal would be largely screened from view by vegetation, buildings and landscape features, and as such while they would be relatively sensitive receptors, there would be negligible or no change in the overall degree of visual effect.
20. Viewpoint 3 is on a sunken section of Treemans Road, where visibility is limited by the banks, trees and hedges, resulting in medium sensitivity. Due to the relative levels and screening there would be no change in the overall degree of visual effect as none of the proposal would be seen from this location.
21. Viewpoints 4 to 8 lie along public footpaths, with views across fields and Treemans Road towards the appeal site. Users of the footpaths are likely to be aware that they are within the AONB and as such both the value of the viewpoints and the receptors' susceptibility to change can be assessed as high. Consequently, the sensitivity of footpath users as visual receptors is high.
22. From viewpoints 4, 5 and 6, the proposed isolation building and feed clamps would be largely screened by existing trees. However, the proposed bunds would be clearly visible in the middle distance, and due to their height and proximity to the road would obscure the rising land behind. Therefore, they would form the new skyline behind the veteran trees, which are currently starkly outlined against the sky. From viewpoint 4 the bunds would be seen as a relatively small part of a wide view, and as such the magnitude of effect would be moderate and the overall degree of visual effect moderate adverse.
23. Moving along the footpath closer to the site, at viewpoint 5 the proposed bunds would occupy more of the view and would extend across much of the gap in the treeline. Due to their height above the surrounding land and their flat profile, they would be highly conspicuous and jarring in these views as an artificial landform. This artificial appearance would be compounded by the steep bank down to existing ground levels, which would be far steeper than the natural slope of the land. Consequently, the magnitude of effect from viewpoint 5 would be major.
24. From viewpoint 6 footpath users would be looking up towards the site due to the slope of the land, however the proposed bunds would still form a prominent backdrop to the few trees along this part of the boundary, and would be closer than when seen from viewpoint 5. As such, I do not agree with the conclusion of the LVIA that the angle of view and change in levels would mean the change in landform would be less noticeable than at viewpoint 5. Therefore, I find that the magnitude of change from viewpoint 6 would also be major

25. Over time, the canopies of the proposed trees would start to break up the extent of the bunds, particularly when in leaf. However, the proposed planting would not be of sufficient depth or density to provide a significant degree of screening. Nor would it affect views through the gaps between the veteran trees. Grassing over the bund would not change its obviously artificial profile or disguise the extent of the height difference to the surrounding land, and as such would not enable it to merge with the existing grassland around it. Consequently, I conclude that from viewpoints 5 and 6 there would be a substantial adverse degree of visual effect.
26. From viewpoints 7 and 8, the proposed feed clamps and isolation building would be screened by the existing trees. There would be a shallower angle of view towards the appeal site and existing vegetation would filter views of the proposed bunds to some extent, resulting in a moderate magnitude of effect from these viewpoints. The proposed landscaping would not wholly disguise the substantial change in landform however, and the land behind the bunds would be obscured. From these viewpoints the undergrounding of the OHL would be of very limited benefit as the other lines around the junction of the footpath and road would remain. As such, the proposal would have a moderate, adverse visual effect from these viewpoints.
27. Viewpoint 9 is within the farm to the south of the site and is of high value due to its location in the AONB, with medium susceptibility to change as it is representative of views for farm workers, who are unlikely to be in the relevant part of the farm frequently or for any significant duration. I therefore agree with the LVIA that overall, the sensitivity would be high. The proposed bunds would form a substantial feature that would dominate views from this field, and would be much larger and extend further into the field than the existing bund. As such, the proposal would have a major magnitude of effect and a substantial, adverse visual effect from this viewpoint.

Conclusion on (i) character and appearance

28. Paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. Even with the mitigation proposed and the benefits identified above, the proposal would result in adverse landscape and visual impacts as a result of the substantial change proposed to the landform of the appeal site.
29. The proposed arrangement of the feed yard, feed clamps and lagoons in relation to the existing and proposed cattle buildings would allow for efficient use of the farm site and minimise vehicle movements. However, while general information has been provided about the dairy sector, including in the High Weald area, no detailed financial or viability information for this business has been provided. There is therefore no substantive evidence before me that the proposal would improve financial returns, or that the business would not be viable without the proposal, as the appellant contends. Consequently, it has not been demonstrated that the proposal would support objective LBE1 of the AONB MP.
30. I recognise the ongoing economic and regulatory pressures on dairy farming and resulting loss of smaller enterprises, and the importance of farming and the land-based economy to the AONB. Local and national planning policies also support rural businesses. However, in the absence of financial information it has not been demonstrated that without this proposal there would be any substantive change to the long-term management and operation of the land. Nor am I persuaded that without it the land would cease to be used for dairy farming, whether that be by the appellant or another farmer. Therefore, it has not been demonstrated that the proposal would result in sustainable growth of the business, or materially

contribute towards objectives S1 or FH1 of the AONB MP which seek to support economic activity and secure agriculturally productive use of the fields of the AONB. Consequently, there is no compelling evidence before me that this proposal is necessary to ensure the long-term, sustainable management of the land in a manner which conserves or enhances the landscape character and special qualities of the AONB.

31. Accordingly, having regard to all impacts of the proposal, I find that it would result in significant harm to the character and appearance of the area and landscape and scenic beauty of the AONB. It would therefore conflict with Policies DP12 and DP16 of the Mid Sussex District Plan (DP), which allow development in the countryside where it maintains or enhances the quality of the rural and landscape character of the District, and conserves or enhances the natural beauty of the AONB. Furthermore, it would fail to protect and enhance valued landscapes as required by Framework paragraph 170.

ii) Whether the proposal would constitute 'major development' in the AONB

32. For the purposes of Framework paragraph 172 and its footnote 55, what constitutes 'major development' in the AONB is a matter of judgement based on its nature, scale and setting and whether it could have a significant adverse impact on the purposes for which an area has been designated. The statutory purpose of AONBs is to conserve and enhance the natural beauty of the area.
33. The proposal comprises a 500m² cattle isolation building, two feed clamps each with an area of 1200m² enclosed by a 3m high wall, a 7150m³ capacity slurry lagoon and a 3000m³ capacity dirty water lagoon and associated bunds which, together with the existing farm complex, would occupy a site of 4.83 hectares. The proposal also involves the importation of a significant amount of material, however the quantity of material would not in itself result in significant impacts, rather those impacts would result from the way in which it would be used and the landform that would be created.
34. By virtue of its nature, siting, design and degree of visibility, the proposal would introduce a significant amount of new development and result in substantial change to the landform. Although this would take place over a localised area, for the reasons set out above it would have significant adverse landscape and visual effects. Therefore, due to its scale, nature and setting the proposal would harm the natural and scenic beauty of this part of the AONB. I therefore consider that it would amount to major development in the AONB. Consequently, paragraph 172 of the NPPF states that planning permission should be refused other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

iii) Whether exceptional circumstances exist, and whether the development would be in the public interest

35. Having had regard to the totality of the evidence before me, I am satisfied that more capacity is needed for storage of slurry based on the farming system in operation, and in order to comply with TB regulations. There would also be a benefit from 'future-proofing' the capacity of the proposed lagoons to accommodate future rainfall accounting for climate change, and to allow for the potential that the site will be included in a Nitrogen Vulnerable Zone. This would be likely to avoid the need for further extensions in the future. As such, and having regard to the detailed calculations provided, I consider that the lagoon capacity proposed has been adequately justified.

36. Because of the limitations on movement of livestock, there is a requirement for more cattle housing, and the appellant has made a reasoned case for additional cow kennels to be sited close to the existing buildings. Although the new cow kennels do not form part of this proposal, there would be a need for feed clamps and a dirty water lagoon to replace those lost in order to make that additional provision. There is also a need for an isolation building to comply with TB restrictions, and no available buildings to meet that need.
37. Consequently, I am satisfied that there is a need for additional structures, buildings and lagoons for the purposes of agriculture for this particular dairy enterprise. Considering TB restrictions on livestock movement, there is no obvious scope for the development to take place on another part of the farm, outside of the AONB.
38. It would also clearly be convenient to have the feed clamps immediately adjacent to the cattle barns and a gravity-fed slurry system, to achieve efficient movement of feed and slurry around the farmyard. The appellant has also demonstrated that provision to the west of the existing farmyard would cause practical difficulties for the safe and efficient operation of the farm.
39. Nevertheless, it is the height, scale and extent of land raising and proposed bunds that would result in the harm identified to the AONB. Although extensive justification has been provided for some elements of the proposal, it has not been explained why the feed clamps need to be set at the same level as the feed yard, or why the slurry and dirty water lagoons need to be so close to the level of the existing pit and yard. Some fall in levels would be needed for a gravity-fed system, however it has not been demonstrated that it needs to be the gentle slope proposed, or that lagoons set at a lower level would not work equally as well as those proposed. Accordingly, it has not been demonstrated that the land levels need to be raised to the extent proposed in order to achieve the stated benefits and an efficient operational layout.
40. There is a balance to be struck between facilitating the land-based economy and preserving natural beauty in the AONB. The proposal would result in significant harm to the character and appearance of the area and the AONB, which would not be significantly moderated by the proposed landscaping scheme or outweighed by the limited benefits of the proposal. Having regard to the Framework, I attach great weight to this harm to the AONB.
41. The appellant contends that the grassed bund proposed would result in less discernible changes in views than would arise from a more conventional form of development such as buildings. There are however no alternative schemes before me to compare with the appeal scheme. Therefore, there is no compelling evidence that the proposal before me is the least harmful way of meeting the acknowledged need.
42. Furthermore, as set out above it has not been demonstrated that the farm enterprise would not be viable without the proposal. Nor has it been shown that there would be material benefits for the local economy, as it has not been demonstrated that dairy farming would cease without this scheme.
43. Accordingly, while there is a need for the development, it has not been demonstrated that the need cannot be met in some other, less harmful way, or that the detrimental effects of the proposal can be satisfactorily moderated. Therefore, exceptional circumstances do not exist and the proposal has not been demonstrated to be in the public interest.

Other Matters

44. The source of the material to be imported to construct the proposal is not yet known, therefore it is unclear whether it would be classified as waste and consequently, whether the proposal would be waste development as defined in the Waste Local Plan (WLP). I am mindful however that the application was determined by the District Council, not the Waste and Minerals Local Planning Authority. As such, the policies of the WLP have not been determinative in my decision. In any event, the requirements of WLP Policies W11, W12 and W13 are broadly consistent with those in DP Policies DP12 and DP16 and Framework paragraph 172 in respect of landscape character and major development in the AONB, with which I have found conflict. Therefore, the policies of the WLP do not weigh in favour of the proposal.
45. The proposal would retain the existing trees, including veteran trees, and the proposed landscaping would result in some ecological benefits, however due to the small amount of planting proposed, these benefits would be limited, and would not outweigh the harm I have identified.
46. There are two Grade II listed buildings to the north of the site, Old Keysford and Treemans Farmhouse. The existing farm buildings and vegetation would screen views between these properties and the proposal, such that they would not be seen or experienced together. Therefore, the proposal would not adversely affect their setting or any features of special architectural or historic interest which they possess. This is however a neutral impact which does not weigh in favour of the proposal.
47. I have found that the proposed cattle isolation building would not have harmful impacts on the character and appearance of the area. However, it is inextricably linked to the other elements of the proposal, as it would be located on the site of the existing feed clamps. I therefore cannot sever it from the remainder of the proposal and issue a split decision.

Conclusion

48. The proposal would conflict with the relevant development plan policies which are the most important for determining the proposal. There are no material considerations, including the Framework, that indicate that my decision should be other than in accordance with the development plan. Consequently, for the reasons set out above, I conclude that the appeal should be dismissed.

L McKay

INSPECTOR