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## Appeal Decision

Site Visit made on 6 July 2021

**by Robin Buchanan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 November 2021**

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**Appeal Ref: APP/H2265/W/20/3256594**

**Land West of Hermitage Farmhouse, Hermitage Lane, Aylesford, Maidstone ME16 9NT**

- 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 Gallagher Air LLP against the decision of Tonbridge & Malling Borough Council.
  - The application Ref TM/20/00955/FL, dated 7 May 2020, was refused by notice dated 26 June 2020.
  - The development proposed is a change of use of land and the erection of a single bay helicopter hangar to provide secure helicopter storage together with maintenance workshop, landing pad, parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use of land and the erection of a single bay helicopter hangar to provide secure helicopter storage together with maintenance workshop, landing pad, parking and landscaping at land west of Hermitage Farmhouse, Hermitage Lane, Aylesford, Maidstone ME16 9NT in accordance with the terms of the application, Ref TM/20/00955/FL, dated 7 May 2020, subject to the conditions set out in the attached schedule.

### Main Issues

2. The main issues are:
  - the effect of the proposed development on the character and appearance of the countryside; and
  - whether the site is a suitable location for the proposal having regard to its intended use and the need for it, and local and national planning policy for development in the countryside.

### Reasons

#### *Character and appearance*

3. The appeal site is part of a horse paddock and contains a field shelter. On one side is a large domestic outbuilding, one of several in the landscaped garden of Hermitage Farmhouse which is a substantial detached two-storey house set in an extensive landscaped garden. This group of buildings is surrounded by countryside which is mainly flat fields and paddocks. Nearby are other groups of (some quite large) buildings or structures at a business park, a farm and equine enterprise, a quarry and a weighbridge with offices. This development is

- separated by distance, topography, rows of hedgerow or belts of trees and is largely spatially and visually discrete.
4. While it has no particularly distinguishing inherent features, and is not designated for its landscape quality, the countryside around this development is nonetheless scenically pleasant and there are some striking panoramic long distance views towards undulating countryside in the distant backdrop. It is therefore of value for these reasons. This pattern of pockets of development set within the open countryside is locally distinctive.
  5. The proposed change of use would alter the nature of the appeal site and activity on it — a small part of the countryside would be lost to commercial use. However, a majority of the site, including next to the paddocks and fields, would remain as undeveloped grassland. Moreover, a significant part of the operational development (helicopter landing pad, connecting apron, paths and parking) would be at ground surface level. These parts of the proposal would therefore have no appreciable visual or spatial presence beyond the appeal site or its immediate private environs.
  6. While it would be the minimum size for its intended purpose, the proposed building would be moderately large in external dimensions. However, and despite its bespoke purpose, the overall appearance, scale and massing would be similar to an equivalent sized agricultural or equine building and it would be well-designed. It would not therefore be inherently out of keeping in this rural location. In addition, it would be sited close enough to Hermitage Farmhouse and its outbuildings to form part of this group of buildings. It would not, therefore, be isolated or incongruent with the pattern of development in the immediate area.
  7. The building would not be visible from most of the surrounding public vantage points, including most of the public footpath that crosses the field to the north-east of the appeal site. At the Hermitage Lane end, the building would be largely screened from view by buildings and landscaping at Hermitage Farmhouse and towards the other end, the field gradient slopes down such that the lower portion of the building and its overall scale and massing would progressively diminish in views. Nonetheless, the building would be clearly observed from the central part of this footpath and it would cause intrinsic visual harm to the openness of the countryside, albeit that the loss of openness in the wider surrounding context would be small.
  8. It would also be seen in some semi-public views from the southern, elevated end of the business park car park, albeit these views would be more limited due to the acute angle of view and intervening tall boundary hedgerows that would screen the lower part of the building. In either view, the proposed landscaping would have a modest screening effect on the overall scale and massing of the building and such planting would not necessarily be permanent. However, in both directions of view, the building would not unduly project above any skyline or ridge and would largely be seen against a backdrop of higher ground or belts of trees.
  9. Considering the above, I find that by reason of its location, size, design and mass the hangar and workshop building would cause limited harm to the character and appearance of the countryside. Consequently, it would not comply with Policy CP24 of the Core Strategy, September 2007 (the CS) or Policy SQ1 of the Managing Development and the Environment Development

Plan Document, April 2010. These policies include that in scale, layout, siting and appearance development should respect the site and its surroundings, including the distinctiveness of the countryside in terms of landscape and important views. It would also conflict with the Framework which seeks to ensure that development is sympathetic to local character and landscape setting, including the intrinsic character and beauty of the countryside.

### *Suitable location*

10. CS Policy CP14 restricts development in the countryside to any one, or more, of the exceptions referred to therein. The supporting text to this policy recognises that some development in the countryside can be beneficial and sustainable and, if such development is justified, new buildings are not excluded.
11. The appellant is part of the Gallagher Group of companies (the Group). It provides helicopter transport for staff and clients in support of the Group's business activities. Some of these are in other parts of the United Kingdom or not directly related to the rural economy. However, near the appeal site Gallagher Aggregates operate Hermitage Quarry<sup>1</sup> and weighbridge (the quarry) for mineral extraction, including ragstone, and some of this material is used in the conduct of the Group's business activities. In addition, Gallagher Farms operate the farm to produce beef and animal feed and to manage the Gallagher Estates, and Gallagher Bloodstock operate the equine enterprise for the breeding and training of race horses (the other rural uses). The Group's headquarter offices (the offices) are located in the vicinity of the appeal site at Aylesford.
12. The Chairman<sup>2</sup> of the Group lives at Hermitage Farmhouse, which has a helicopter landing pad in the garden. The Group has operated a company helicopter here for more than 15 years in connection with the quarry, though it has been housed and maintained elsewhere. The hangar and workshop building would allow storage and maintenance of the helicopter to happen securely on the appeal site without prolonged exposure to the elements, dust from the quarry or risk of potential vandalism or theft. It would ensure the safe operation of this aircraft.
13. While there is no evidence that the offices require a rural location, these are nevertheless on a site in the countryside which is well-located and convenient for the operation and management of the quarry and the other rural uses. Moreover, the quarry and the other rural uses either require a rural location, are not unusual or unexpected in the countryside and are not incompatible in principle in such a location. There is no evidence that any of these uses are unlawful for planning purposes.
14. The helicopter operates primarily in support of the quarry and provides efficiency (time and cost) savings which would be incurred using alternative modes of transport. Housing and maintaining a helicopter that is already linked to the operation of the quarry (and in turn to the offices and the other rural uses) on a site that would remain well-located and convenient, next to where the helicopter has operated historically, would be advantageous to the continued operation of the quarry, and the other rural uses and the control of these from the offices. In addition, while there is no evidence that the location

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<sup>1</sup> Referred to in evidence as 'Hermitage Quarry'.

<sup>2</sup> Also referred to in evidence as the 'Chief Executive'.

of the appeal site would be more or less convenient for the pilot(s) of the helicopter in terms of travel to work, the proposal would reduce flight movements by approximately half. Furthermore, it would also eliminate time or cost inefficiencies due to renting hangar space elsewhere, or in fuel consumption and air pollution incurred flying the helicopter from a more distant location, such as Rochester or Brighton airports.

15. While there is no employment use at Hermitage Farmhouse, the quarry, the offices and the other rural uses do provide employment on sites which are, albeit disaggregated, close to each other locally. The Group is one of the largest employers in the Borough and its activity in the vicinity of the appeal site incorporates a substantial area of land and a significant scale and quantum of buildings and other development, most notably at the quarry.
16. The proposal would include a moderately large building and would not extend an existing employment site by direct physical attachment or enlargement. However, it would nonetheless be located in close physical and functional proximity to the quarry, as well as to the offices and the other rural uses. Moreover, the extraction of ragstone at the quarry is anticipated to likely have a life expectancy of about 20 years and as such would commercially justify the build cost of the proposed development.
17. Accordingly, I am satisfied that the proposed development needs to be in a rural area and that it would amount to a limited expansion of an existing authorised employment use in the countryside. The new building and related development are justified and essential to maintain the successful operation of the quarry. It would also support the operation of the offices and the other rural uses.
18. Considering the above, I find that the appeal site is a suitable location for the proposal having regard to its intended use and the need for it. Consequently, it would comply with CS Policy CP14. This policy supports development in the countryside for which a rural location is essential or that is required for the limited expansion of an existing authorised use. It would also be consistent with the Framework which seeks to enable the sustainable growth and expansion of all types of businesses in rural areas, including through well-designed new buildings. The Framework also recognises that sites to meet local business needs in such areas may have to be beyond existing settlements.

### **Other Matters**

19. There would be increased intensity of helicopter related activity at the appeal site. However, it is likely that most static, potentially noise generating, activity would be conducted inside the proposed building and take-off and landings would be a transient event. Moreover, the hours of operation of flights to and from the appeal site could be controlled by a condition to avoid harm to the living conditions of existing or future occupiers of residential properties in the vicinity of the site. The existence of the development would be a factor to be considered by any potential future purchaser of such property.
20. Both main parties have made representations about potential alternative sites for the proposed development, including possible future development at Rochester airport further to planning permissions granted by another Council. I do not have full details of these applications or that development.

Nonetheless, I have considered the appeal proposal on its individual planning merits and find that it is acceptable for planning purposes on the appeal site.

### **Planning Balance**

21. The proposed development would cause limited intrinsic harm to the character and appearance of the countryside. I therefore attach modest weight to this consideration. However, the quarry is a rural enterprise which requires a countryside location. It is essential for the proposed development to be located in this rural area and the new building is justified as a limited expansion in support of an employment use. There would be appreciable social, economic and environmental benefits from the construction and operation of the development and these would be aligned with relevant objectives of the Framework. Accordingly, these benefits have significant weight. Consequently, the benefits would outweigh the limited harm to the character and appearance of the countryside.

### **Conditions**

22. I have considered the conditions suggested by the Council and by the appellant. Where necessary I have amended the wording of conditions in the interests of clarity or to make them more concise, in light of the tests and advice in Framework paragraph 56 and in Planning Practice Guidance<sup>3</sup>. Some of the conditions are of a 'pre-commencement' type as the matters or outstanding details referred to therein need to be resolved before any development or specified works above ground take place. The appellant did not object to these.
23. In addition to the standard time limit condition (1), a condition (2) is necessary to specify the approved plans and documents to ensure certainty. Conditions (3), (4) and (5) are necessary to ensure, respectively, that the development is carried out in accordance with specified details for external materials, landscaping and boundary treatment and external lighting (the latter I have imposed). These are in the interests of the character and appearance of the area. A condition (6) limiting flying times is necessary to protect the living conditions of the occupiers of residential properties in the vicinity of the appeal site from undue noise disturbance.
24. I am satisfied that conditions (1) to (6) would serve a useful planning purpose and are also relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
25. Condition (7) would ensure that upon cessation of the extraction of ragstone at the quarry the appeal site would be restored to its condition prior to the development. The condition is necessary because the main justification for the proposal is its functional relationship to the quarry. Restoration conditions are routinely applied to minerals development and although it is not itself a minerals development, the proposal has a clear association with the quarry. The condition is therefore relevant to the development being permitted and it is reasonable and relevant to planning in this context to seek commensurate restoration of the appeal site. The intention of the condition is clear and it sets out what is required and when and, as such, it is precise and enforceable.
26. The Council's environmental protection team suggested a condition to control hours of working during construction. However, the appeal site is sufficiently

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<sup>3</sup> Paragraph: 003 Reference ID: 21a-003-20190723.

far from nearby dwellings that construction activity is unlikely to cause undue noise or disturbance and such works would in any event be temporary in duration. The Council has other powers to control statutory noise nuisance. A condition in this regard is not therefore necessary or reasonable.

### **Conclusion**

27. The proposal would accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, I conclude that the appeal should succeed.

*Robin Buchanan*

INSPECTOR

## **Schedule of Conditions (7)**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 3995/p01 site location plan
  - 3995/p02 existing site plan
  - 3995/p03b proposed site plan
  - 3995/p04b proposed floor plans
  - 3995/p05b proposed elevations
- 3) Notwithstanding condition 2, no development shall commence above ground until there shall have been submitted to and approved in writing by the local planning authority details and samples of the materials to be used in the construction of the external surfaces of the helicopter hangar and maintenance workshop, helicopter landing pad, connecting apron, paths and parking spaces hereby permitted. Development shall be carried out in accordance with the approved details and samples.
- 4) Notwithstanding condition 2, no development shall commence above ground until there shall have been submitted to and approved in writing by the local planning authority details of landscaping and boundary treatment. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the helicopter hangar and maintenance workshop hereby permitted or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All fences, walls or similar structures comprised in the approved details of boundary treatment shall be erected before the first use of the helicopter hangar and maintenance workshop hereby permitted and thereafter retained.
- 5) The development hereby permitted shall not be occupied or used until details of external lighting, including the intensity of illumination and predicted lighting contours, shall have been submitted to and approved in writing by the local planning authority. Once installed, external lighting shall be retained thereafter in accordance with the approved details.
- 6) Helicopter movements to and from the site shall take place only between the hours of 08:00 and 19:00, except in emergencies.
- 7) The use, building and other works hereby permitted shall be for a limited period from the date of this decision, being the period of the duration of the extraction of ragstone at Hermitage Quarry. The helicopter hangar and maintenance workshop, helicopter landing pad, connecting apron, paths

and parking spaces hereby permitted shall be removed, and the use hereby permitted shall be discontinued, and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority. The scheme of work shall be submitted to the local planning authority within one month of the extraction of ragstone at the quarry ceasing and shall include a programme and timetable for the restoration works. Restoration shall take place in accordance with the approved scheme of works.