



Appeal Decision

Hearing Held on 15 June 2022

Site visit made on 15 June 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2022

Appeal Ref: APP/R3650/W/21/3283914

Lemans Barn Farm, Wykehurst Lane, Ewhurst, Cranleigh GU6 7PF

- 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 Ms S Hayes against the decision of Waverley Borough Council.
 - The application Ref WA/2020/1853, dated 26 October 2020, was refused by notice dated 16 April 2021.
 - The development proposed is described as '*For a new siting of the dwelling approved by WA/2018/2132 and associated landscaping works*'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling and associated landscaping following demolition of existing agricultural barns at Lemans Barn Farm, Wykehurst Lane, Ewhurst, Cranleigh GU6 7PF in accordance with the terms of the application Ref WA/2020/1853, dated 26 October 2020, subject to the conditions in the attached schedule.

Procedural and Preliminary Matters

2. I have taken the description of development in my decision above from the Council's decision notice, as it most accurately describes the proposal. This was agreed by the main parties at the hearing.
3. Revised site plan Ref 20066-PL-01 Rev O and sections Ref 20066-PL-02 Rev D were submitted with the appeal. They reduce the size of a proposed pond and add a fence around the intended curtilage of the dwelling. At the hearing the Council raised no objection to these revisions. As the revisions reduce the scale of development and/or are minor in nature, and with regard to the Wheatcroft principles¹, I took these plans into account without prejudice to any party.
4. On 16 May 2022, during the appeal, the Council issued a lawful development certificate Ref WA/2022/00035 relating to land within the site. The certificate confirms the lawful commencement of development pursuant to WA/2018/2132 for the '*Erection of a new dwelling following demolition of existing agricultural buildings (Revision of WA/2018/1669) (as amended by plans received on 04/12/2018)*'. I also took this into account in my decision.
5. After the hearing an executed Unilateral Undertaking (the UU) was submitted by the appellant. It intends to allow for either the full implementation of permission Ref WA/2018/2132 or the appeal proposal, or neither, in the event I were to allow the appeal. I return to this matter later in my decision.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another (1980)

6. The appellant has sought to restrict the extent of the proposed residential use of the site by defining a curtilage around the house. Curtilage is not, however, a land use, and it was not fully explained at the hearing how defining an area as curtilage would restrict the extent to which the rest of the appeal site could be used for residential purposes. As such, I have assessed the appeal on the basis that the appeal site as a whole could potentially be put to residential use.

Main Issues

7. Against this background, the main issues are the effect of the proposal on:

- the character and appearance of the area, with reference to the Area of Great Landscape Value (the AGLV), the setting of the Surrey Hills Area of Outstanding Natural Beauty (the AONB) and protected trees; and,
- the integrity of the Ancient Woodland as an irreplaceable habitat.

Reasons

Character and appearance

8. The site is predominantly formed of a paddock scattered with oak trees, and a smaller woodyard within which are two fairly insubstantial barns, together the subject of Ref WA/2018/2132. A Public Right of Way (PROW) on a rough east/west axis lies a short distance to the north. To the west, demarked by a track, is Upper Canfold Wood, which is designated as an Ancient Woodland.
9. The site is within an AGLV, and the PROW is inside the AONB which is directly to the north. The Council does not consider that harm would arise to the AONB. However, I am mindful of my own duty to consider any effect of the proposal on the statutory purpose of the AONB to conserve and enhance the natural beauty of the area, a requirement which extends to its setting. Paragraph 176 of the National Planning Policy Framework (the Framework) also states that development within the setting of AONBs should be sensitively located and designed to avoid or minimise adverse impacts on the designated area.
10. The paddock is viewed in passing and at range from a section of the PROW aside the barns and through a single gap in the appeal site's north boundary vegetation. It reads as an area of pleasant parkland. When traveling west, the barns and woodyard appear as a prominent and unsympathetic edge to the Ancient Woodland, just before one takes the PROW into the woodland itself.
11. Filling the gap in the north site boundary would ensure the dwelling would only be visible from the area of the PROW aside the barns, and then only partially so and at a distance. Mere visibility of development does not necessarily equate to harm and, critically, I am aware that dispersed housing is characteristic of this part of the AGLV, and indeed I observed that it is already a feature of the journey along the PROW. Within this context, the dwelling would have only a limited urbanising effect on the AGLV and the setting of the AONB.
12. On the other hand, replacing the barns and woodyard with the pond and landscaping would provide an enhanced green edge to the Ancient Woodland at this prominent gateway point. I was also told at the hearing that ponds are an important but disappearing feature of this landscape. As such, these elements of the scheme would be beneficial to the quality of the AGLV and the setting of the AONB. In my view, the overall effect of the proposal on these two landscape designations would be neutral.

13. Turning to protected trees, the main parties agreed at the hearing that the site forms part of the woodland Tree Protection Order HM/R2. Whilst the dwelling would not be constructed within the root protection area of any tree and would not physically affect the crown of any tree, the Council is concerned about future pressure for deleterious tree works arising from occupants. In principle, this is a legitimate position to take under the terms of British Standard 5837.
14. That being said, I have not been presented with any convincing scenario where the Council may feel obliged to allow such tree works in the future. The dwelling would be in a small clearing. Just one tree (T18) would cast shade on the house for part of the afternoon/evening, and only then to a relatively small area of the property. It was sunny at my visit, so I was able to see that a significant degree of sunlight reaches the paddock floor. Given such, and even anticipating for a degree of continuing crown growth, I am not persuaded that shading would be an adequate justification for future tree works.
15. Given the spacing of the dwelling from the nearest trees, I am satisfied that subsidence through future root growth is unlikely to be an issue. There is a low, innate safety risk around falling tree branches in any garden, but there is nothing in the condition of the high value trees within the paddock to suggest that they would present any palpable risk to future occupants. The appellant's arboricultural expert informed me at the hearing that honeydew, which can be a nuisance, does not affect oak trees to the same degree as other tree species. The need to clear leaf fall is within the realms of the typical maintenance I would expect residents to undertake and is unlikely to justify tree works.
16. Consequently, I conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area, with reference to the AGLV, the setting of the AONB, and protected trees. It would accord with the relevant landscape aims of Policies NE2, RE1, RE3 and TD1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (adopted 2018) (LPP1) and saved Policies D1, D4 D6 and D7 of the Local Plan (2002) (LP02).

Ancient Woodland

17. The Framework defines Ancient Woodland as an irreplaceable habitat. Paragraph 180 c) states that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists. The government also provides its 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions' guidance, which was updated earlier this year.
18. Amongst other things, it recommends that a buffer of at least 15m be maintained between development and Ancient Woodland and for residential gardens to be excluded from these buffer zones. In this case, the west of the site is within the 15m buffer and in places encroaches into the Ancient Woodland itself. The access track passes through the Ancient Woodland and the first section of the drive turning into the site would be within the buffer.
19. However, this section of drive would be very small and relates to an existing, and logically already utilised, gateway. I understand that the track is regularly used by forestry vehicles and occasionally to access premises around Lemans Barn Farm. As such, the modest intensification of vehicular activity using the track in association with the proposal is unlikely to have an appreciable impact on the Ancient Woodland habitat.

20. Much of the buffer would be inaccessible or unusable in practice if the proposed vegetation and pond were to be provided and retained. Nonetheless, having regard to areas of the buffer to be left open, such as the parcel of paddock to the west of the dwelling, it would be necessary to expressly exclude residential use from the buffer. Moreover, notwithstanding the landscaping details before me, in order for this to be effective, the buffer would need to be clearly delineated and enclosed, such as by modest post and rail fencing.
21. These matters could be addressed by conditions. If such an approach were adopted, the residual site area beyond the buffer would still provide ample leisure space for residents of a property of this size. Whilst I agree that the site is fairly secluded, the buffer would be seen from the PROW and would also be clearly visible to third parties using the track. I am therefore satisfied that such conditions would be both reasonable and adequately enforceable.
22. The Council confirmed at the hearing its agreement that the pond's detailed construction could be addressed by a condition. Concerns lingered about the excavation to form the pond, but the woodyard already appears formed of disturbed and regraded land, so it is unlikely that the modest excavation work for the pond would harm any woodland soil of value or any tree root systems.
23. I therefore conclude on this issue that the proposal would have an acceptable effect on the integrity of the Ancient Woodland as an irreplaceable habitat. It would accord with the relevant aims of Policies NE1 and NE2 of the LPP1 and saved Policies D6 and D7 of the LP02 and the Framework.

Other Matters

24. Interested parties are concerned that future occupants may access the site via Wykehurst Lane. Whilst this is not the appellant's intention, additional use of the lane resulting from a single dwelling is unlikely to have a discernible effect on its functionality or safety. Avoidance of this route by construction vehicles could be ensured by a travel plan, secured by a condition. Given the significant distances involved, the proposed dwelling would have a negligible impact upon the living conditions of neighbouring residents.
25. Comments have also questioned the appropriateness of effectively substituting a permission on 'brownfield land' (Ref WA/2018/2132) with a scheme on greenfield land, and the potential to set a precedent in doing so. However, each case must be assessed on its own merits. In any event, the Framework's definition of previously developed (or brownfield) land excludes land occupied by forestry buildings, and therefore both the scheme Ref WA/2018/2132 and the appeal proposal appear to relate to land which is by definition greenfield.

Unilateral Undertaking

26. Evidently though, this is not a location within the plan area where the Council may typically find new build housing to be policy compliant, Ref WA/2018/2132 having come off the back of housing approved pursuant to Permitted Development Rights. This means that the UU is necessary to prevent a net increase in housing with fully implementable planning permission at the site.
27. If both dwellings were built, there is also potential for unacceptable, cumulative impacts on the landscape and the Ancient Woodland. The UU therefore meets the three legal tests for planning obligations set out by Community Infrastructure Levy regulation 122 and as reiterated in the Framework.

Conditions

28. The Council supplied a list of conditions with its appeal statement, which was added to by the appellant at the hearing. I have amended the suggested conditions where appropriate for the sake of clarity and precision.
29. In addition to the standard time condition, it is necessary for a condition to list the approved plans in the interest of certainty. In the interests of high-quality design, a condition must ensure that the detailed finish materials of the dwelling are agreed and delivered. This need not be agreed prior to the commencement of development, but before work above slab level.
30. Given the sensitivities of the site with regard to its landscape setting and the proximity of nature sites, conditions are required in order to secure a detailed landscaping scheme and a landscape management plan. For the same reasons, plus the potential for protected species to enter the appeal site, a construction environment management plan needs to be agreed with the Council prior to the commencement of work. As already explained, a transport plan is also needed for the demolition and construction phase. With reference to the potential for bat and/or dormouse activity within the wider area, a condition is required to restrict external lighting within the ancient woodland buffer.
31. To ensure that the development respects the integrity of protected trees within the site, respective conditions are essential in order to secure arboricultural best practice and to ascertain drainage works. Similarly, full details of the specification of the ponds and levels of the drive and dwelling are required to protect the integrity of the protected trees and the adjacent ancient woodland.
32. A condition is required to ensure the delivery of biodiversity net gain within the site. It is essential that a condition protects the ancient woodland from deterioration by demarking its buffer and precluding use of the woodland and its buffer for residential purposes. Finally, to support sustainable patterns of development under the terms of LPP1 Policy CC2, a condition is required to ensure the installation of a fast charge socket.

Conclusion

33. For the reasons outlined above, and taking all matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Susan Hayes	Appellant
Graeme Keen QC	Landmark Chambers
Jayne Wunderlich	Paradigm Planning
Karen Law	Paradigm Planning
David Archer	David Archer Associates
Emma Reed	Reed Studio
Joe Perkins	Joe Perkins Design
Richard Law	Sylvatica Ecology Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Philippa Smyth	Principal Planning Officer
Matt Kolaszewski	Development Lead – Majors and Minors
Ian Brewster	Tree and Landscape Officer
Barry Devlin	Planning Solicitor

INTERESTED PERSONS

Cllr Val Henry	Ward Member and Ewhurst Parish Councillor
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DOCUMENTS SUBMITTED AT THE HEARING

Updated conditions list

Forestry commission assessment guide (2018)

The Government's Ancient woodland, ancient trees and veteran trees: advice for making planning decisions (2022)

DOCUMENTS SUBMITTED AFTER THE HEARING

Executed Unilateral Undertaking

Composite Land Registry Plan

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 100 REV 1, 101 REV 1, 20066-PL-01 REV O, 20066-PL-02 REV D, 20066-PL-03 REV E, 20066-PL-04 REV B, 20066-PL-05.
- 3) Prior to work above slab level, samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the details within the approved plans, prior to work above slab level, a detailed hard and soft landscaping scheme must be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall be carried out strictly in accordance with the agreed details and carried out prior to the occupation of the dwelling. The landscaping shall be maintained for a period of 5 years after planting, such maintenance to include the replacement of any trees and shrubs that die or have otherwise become, in the opinion of the Local Planning Authority, seriously damaged or defective. Such replacements to be of the species as those originally planted.
- 5) Before the development is first occupied or brought into use, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
- 6) Prior to the commencement of development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP will include: details of how protected habitats and species, including woodland features, will be protected from any adverse impacts as a result of construction; practical measures to avoid and reduce impacts during construction; location and timing of works to avoid harm to biodiversity features; and use of protected fences, exclusion barriers and warning signs.
- 7) No development shall commence until a Construction Transport Management Plan, to include details of: (a) parking for vehicles of site personnel and visitors (b) loading and unloading of plant and materials (c) storage of plant and materials (d) programme of works (including measures for traffic management) (e) provision of boundary hoarding behind any visibility zones (f) HGV sizes, deliveries and hours of operation and (g) the route of all construction related vehicles to and from the site has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
- 8) No external lighting shall be installed in the buffer identified on plan Ref 20066-PL-01 REV O without the permission in writing of the Local Planning Authority.

- 9) No development shall commence, including any ground remediation, demolition or groundwork preparation, until a detailed Tree Protection Plan 'TPP' and related Arboricultural Method Statement have been submitted to and approved in writing by the Local Planning Authority. These shall include details of (i) the specification and location of exclusion fencing, ground protection, (ii) the phasing and method of all earthworks and construction activity that may take place within the Root Protection Area of trees including installation of retaining features, no-dig driveway and service routings and (iii) arboriculturist monitoring and supervision of each stage of development potentially affecting trees. All works shall be carried out in strict accordance with the approved details.
- 10) Prior to the commencement of development, details of any services to be provided, including drainage and soakaways, on or adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority and shall be carried out as shown.
- 11) No development shall take place until details and sections of all above ground ponds have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of the land areas including the levels and contours to be formed, showing the relationship of the proposed mounding to existing vegetation and surrounding landform, and details of the construction of the pond including its lining. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) No development shall take place until full details, above ordinance datum, of the ground floor of the proposed building in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 13) No development shall take place until a scheme for biodiversity net gain has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in full prior to the occupation of the dwelling hereby approved.
- 14) Notwithstanding the details within the approved plans, prior to the commencement of development details of a means of enclosure to demark the buffer identified on plan Ref PL-01-REV O shall be submitted to and approved in writing by the Local Planning Authority. Prior to occupation of the dwelling hereby approved, the means of enclosure shall be fully constructed, and thereafter retained. The buffer shall not be used for purposes ancillary to or incidental to the enjoyment of the dwelling hereby approved.
- 15) The dwelling hereby approved shall not be occupied until the dwelling is provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.