



Appeal Decision

Hearing held on 31 May 2023

Site visit made on 1 June 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2023

Appeal Ref: APP/U2235/W/23/3315075

Roseacre, Scragged Oak Road, Detling, Maidstone ME14 3HL

- 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 Miss Samantha Bennett against the decision of Maidstone Borough Council.
- The application Ref 21/505963/FULL, dated 3 November 2021, was refused by notice dated 22 July 2022.
- The development proposed is described as 'demolition of 7(no) outbuildings; erection of 1(no) detached dwelling, 3(no) replacement buildings to support existing rural enterprise, comprising of 1(no) polytunnel with associated hard and soft landscaping, erection of farm shop/cafe with attached machinery store, and erection of 1(no) timber building. Part retrospective for change of use of land for keeping of livestock, retention of existing timber storage and processing yard, retention and provision of plant nursery.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address and description of development in the banner heading above are taken from the Statement of Common Ground which has been agreed by the main parties.
3. I saw at my visit that the appeal site was in use including as a plant nursery, and for timber storage and processing and residential purposes. There were a number of structures present including a mobile home, a barn, greenhouses, sheds, chicken enclosures, polytunnels and a log store. These ostensibly reflect structures shown on the submitted 'Existing Block Plan', 'Existing Polytunnels and Wood Store', and 'Existing Mobile, Barn, Sheds and Greenhouses' drawings.
4. However, the Council considers the buildings/structures and mobile home as well as areas of hardstanding currently present to be unauthorised. The appellant suggested that the barn and 3 sheds on the site are lawful by virtue of the length of time that they have been present, but acknowledged that there are no Lawful Development Certificates which confirm this position. The information before me includes historic aerial photographs which do appear to show some structures present, but I can draw no firm conclusions from the limited details provided in respect of whether these are consistent with the structures now on the site. Furthermore, the mobile home, greenhouses, chicken enclosures, log store and polytunnels are more recent, and the

appellant did not argue at the Hearing that they were lawful. Neither did they challenge the Council's position that the lawful use of the site is agricultural.

5. It is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 to determine whether or not a use or development is or would be lawful. Regardless of the outcome of this appeal, it is open to the appellant to apply for a determination under sections 191/192 of that Act if they wish to ascertain as much. However, I have considered the evidence provided in respect of the existing use and buildings insofar as it is material to my assessment of the appeal. In this context and notwithstanding the description of development, I am not satisfied from the information before me that I have sufficient grounds to conclude that existing structures on the site are lawful.
6. Furthermore and despite reference in the description of development to '1(no) polytunnel', the appellant confirmed at the Hearing that permission was sought for two polytunnels which are already on the site, and the erection of one additional polytunnel. The Council indicated that it had assessed the proposal on that basis. The appellant also clarified that the proposed farm shop/café with attached machinery store would result from the conversion and extension of the log store currently present on the site.
7. Notwithstanding the stated description of development, I have considered the appeal in light of the above, and assessed the proposal as seeking permission for the development as it is shown on the submitted 'proposed' plans.
8. As part of the appeal, the appellant submitted an amended plan showing changes including the removal of one polytunnel, the timber storage building and the café element of the proposed development, and requested that I consider a revision to the description of development to omit these elements. The 'Procedural Guide: Planning Appeals - England' makes it clear that 'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'.
9. Although the amendments in this case relate to the removal of elements of the originally proposed development, each element would in itself be fairly significant and I consider that when taken together, they would materially change the proposal. Their removal could also have potential implications for the Business Plan and forecasts that were submitted in support of the proposal. Furthermore, those who were originally consulted on the application would have been likely to make their assessment on the basis of the overall development. I cannot be sure that they would be aware of the amended proposals. Nor can I be sure that there would be no change to their views, or that they would not wish to comment further on the various proposed changes or the overall development as amended. In the interests of fairness, I have therefore determined the appeal on the basis of the development shown on the proposed plans that were before interested parties and the Council at the time of its decision.
10. After the appeal was submitted but prior to the Hearing, the appellant submitted a number of items of late evidence¹. The Council was able to

¹ A Transport Statement with trip data; an Existing Topographical Survey drawing (plan ref 2021-0123-001-Survey Plan); Unaudited Financial Statements for the year ended 28 February 2021; a Directors' Report and Financial Forecast for the year ended 28 February 2022; and a written statement with commentary from the appellant.

consider and respond to this evidence at the Hearing. The appellant was also able to respond at the Hearing to written comments on their late evidence made by Kent County Council Highways & Transportation and Acorus Rural Property Services which were submitted by the Council during the event. The further documents submitted by the appellant and Council would not materially alter the development applied for or necessitate further consultation with interested parties, and I am satisfied that my consideration of them would not prejudice the interest of any party. I have therefore taken them into account in determining the appeal.

Main Issues

11. The main issues are:

- a) whether or not the proposed dwelling would accord with development plan policies relevant to housing proposals outside of settlement boundaries including with particular regard to the requirement for a dwelling on the site, and the financial basis of the enterprise;
- b) the effect of the proposal on the character and appearance of the area and the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty;
- c) the effect of the proposal on highway safety; and
- d) whether or not the proposed retail use would accord with development plan policies relevant to retail proposals outside of settlement boundaries including with regard to whether or not it would support the maintenance of land in agricultural and other appropriate land based uses.

Reasons

Location of Dwelling

12. Policy SS1 of the Maidstone Local Plan 2017 ('the LP') outlines the spatial strategy for the area and the Council's approach to the distribution of development. It highlights some broad locations identified for significant housing growth, but otherwise seeks broadly to focus development towards an expanded Maidstone urban area, with a secondary focus for housing development in rural service centres, and some further limited housing development at named larger villages. In other locations, the Policy states that protection will be given to the rural character of the borough avoiding coalescence between settlements.
13. The appeal relates to a broadly rectangular parcel of land to one side of Scragged Oak Road and proposes development including a dwelling. The site is within the countryside in planning policy terms, and is not a location where Policy SS1 of the LP would generally support new housing development. Furthermore, services, facilities and access to public transport in the vicinity of the site are very limited, and the appellant has not disputed that occupiers of the site would be likely to rely heavily on travel by private vehicle.
14. However, Policy DM34 of the LP outlines that proposals for dwellings in the countryside may be permitted where they would support agricultural or forestry activities and meet specified criteria. Where a permanent dwelling is proposed, these criteria include that there is a clearly established existing functional need for the dwelling; that the need relates to a full time worker or one who is primarily employed in agriculture; and that the unit and the agricultural or

forestry activity have been established for at least 3 years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so.

15. Considering first whether the dwelling would support agricultural or forestry activities, the appellant advises that there have to date been three main strands of activity at the site which they propose to continue as part of the future enterprise. Of these strands, the keeping of livestock would be an agricultural activity. The plant nursery could also comprise an agricultural use subject to the proportions of plants that were grown on the site. The details before me indicate that a fairly significant proportion of plants sold in 2022 had been brought in from elsewhere, but the appellant advises the proportion was much lower in 2023 and would remain low in future. However, the timber processing and storage would utilise timber from off-site sources, and would not be agricultural or forestry activity. While there is little firm documentary evidence before me of the relative contributions that the different strands have made to the overall business, the appellant's comments at the Hearing suggested that sales of logs accounted for around at least 40% of turnover in 2022, and that demand in 2023 had increased. On this basis, it would seem to me to be a significant element of the overall enterprise, and I am not satisfied that the proposal would accord fully with Policy DM34 insofar as it provides specifically for dwellings in support of agricultural or forestry activities.
16. The appellant has also referred to paragraph 80 of the National Planning Policy Framework ('the Framework') which identifies an essential need for a rural worker to live permanently at or near their place of work in the countryside as one of the circumstances in which the development of an isolated home in the countryside may be acceptable. While it may not be entirely agricultural, I have no firm reason to find that the proposal could not reasonably be considered to be a rural enterprise.
17. Be that as it may, there would still have to be an essential need for a rural worker to live on the appeal site in order to meet the terms of paragraph 80 of the Framework. The Framework does not define 'essential need'. However, I note that the national Planning Practice Guidance identifies considerations that it may be relevant to take into account which include evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise and the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. These considerations are broadly consistent with some of the criteria specified within Policy DM34 of the LP, and to my mind, both the Framework and Policy DM34 indicate a need to consider the requirement for the dwelling on the site and the financial basis of the enterprise.

The requirement for a dwelling on the site

18. The appellant's Business Plan states that living on site is critical to the business, and that livestock is the primary concern. In particular, I heard that caring for chickens includes letting them out at dawn and bringing them back in at dusk, socialising them, and hand turning eggs 4 times a day. It was also suggested that an on-site presence is important to be able to respond in the event of a power cut which could turn off heat lamps and incubators.

19. However, the Council referred to potential use of back-up generators to mitigate against power cuts, and I have no substantive evidence to demonstrate that such options have been considered as an alternative to living on-site and discounted. The other tasks highlighted by the appellant may require a presence on the site including in the early morning and late evening, but numbers of chickens and eggs would be limited, and there is little before me to indicate that a continuous presence would be required through the day and night.
20. Moreover, the evidence before me indicates that chickens and eggs represent a small part of the enterprise and have made only a very modest contribution to turnover in the past. Indeed, I heard that chickens had only fairly recently returned to the site after a break last year owing to bird flu, and their absence had effectively been compensated for by an uplift in other activities at the site. I also have no substantive information to clearly evidence margins on this element of the business, and so I do not know to what extent it contributes to profits and the overall financial position of the enterprise.
21. In my judgement, it is therefore far from clear that care of livestock is or would be an integral part of the success of the business. With regard also to the seemingly very small scale of this element of the proposal, I am not satisfied that the lack of an onsite presence to care for livestock would be detrimental to the enterprise overall.
22. In relation to the plant nursery, the appellant advised that watering and feeding of plants needs to be done after around 8pm during the summer months, and that hand picking of slugs is done at around 11pm. I appreciate that living on site would make such tasks more convenient. Even so, the information before me does not suggest that they are particularly onerous or time-consuming activities that could not reasonably be managed through shift/working patterns, nor that they would require a 24-hour presence. Similarly, while there would be a need for a staff presence during the day when the nursery was open to customers, there is no compelling evidence to demonstrate that this would generate a need for a dwelling.
23. The Business Plan comments that the development of a glamping or camping offer would require a 24-hour presence, and I note suggested use of the Caravans and Site License Act to obtain an exemption certificate to allow visitors to camp on the site. However, camping/glamping does not form part of the development applied for, and there is little firm information before me to indicate the scale or duration of any such activity, nor how and where it could be accommodated within the site. In these circumstances, I cannot be sure that camping/glamping is a realistic prospect and I can draw no firm conclusions as to whether there would be an associated requirement for an on-site presence. As a consequence, I give very limited weight to this as a factor in favour of establishing a requirement for a dwelling on the site.
24. Living on site could offer security benefits, including for machinery and stock kept on the site, and the Business Plan has highlighted examples of thefts that have occurred from garden centre/nursery sites elsewhere. However, I have not been made aware of specific incidents or concerns related to the appeal site to suggest that security is anything other than a generalised concern. Such concern would be likely to apply to any rural business, and is not in my view sufficient in itself to justify a dwelling. There is also little firm evidence to show

that adequate security could not be provided through use of alternative measures or systems such as securing buildings or CCTV. These factors limit the weight that I afford to security considerations in favour of the dwelling.

25. I appreciate that an on-site dwelling could offer some benefits to the enterprise and to the appellant, but in my assessment, the above factors, even when taken together, do not adequately demonstrate that a dwelling would be required to support the enterprise on the site. In the absence of a clear functional need for the dwelling or an essential need for a rural worker to live at or in close proximity to the site to ensure the effective operation of the enterprise, the proposal would not gain support from either Policy DM34 of the LP or paragraph 80 of the Framework.

The financial basis of the enterprise

26. Notwithstanding my findings above that it has not been demonstrated that the dwelling is required, I have for completeness also considered the financial basis of the enterprise.
27. The appellant indicates that turnover of the enterprise has increased yearly since it was established. Their evidence shows a small profit in 2020 and 2021, but even when this is combined with the director salaries and wages paid, it would be some way short of a reasonable wage for one full time worker. The Director's Report and Financial Forecast for the year ended 28 February 2022 suggests an improved financial position in 2022 which would appear to support what would be a broadly reasonable wage for one full-time worker. However, this is a forecast only and so I cannot be sure that it is an accurate representation. Moreover, I note that 2 people work full time within the enterprise. While these individuals may have been able to live on the income provided, the appellant commented at the Hearing that they have sometimes had to go without. I was informed that profits have been low because of investments made in the business, for example to purchase equipment and machinery, which will not need to be repeated in future, but the amount and nature of any investments is not made clear in the submitted accounts. I can therefore draw no firm conclusions in respect of how this may have affected overall profit levels. Given these factors, I am not satisfied from the information before me that the enterprise has been able to support a reasonable wage for the number of full-time workers engaged in sustaining the enterprise.
28. The appellant expects to show an increase in turnover for the year ending in 2023, but while they suggest that there will also be an increase in profit, I have no firm evidence to bear out this statement. For these reasons, I find that the appellant's assertion that the enterprise is currently financially sound has not been substantiated.
29. Looking to the future, the Business Plan indicates relatively modest growth in egg and chicken and log sales, as well as a modest level of future income from aquatic sales, tea room sales and honey sales. It also shows stronger growth in plant sales, and that there would be a substantial income stream from holiday accommodation by the end of the plan period. However, there is relatively little detail within the Business Plan to breakdown or explain the basis of the forecasts presented or to detail overall levels of profit according to the different streams. Moreover, while the appellant advised at the Hearing that it was not necessary to support the business, I have already highlighted reservations

about relying on camping/glamping given that this is not part of the development proposed at this time.

30. Furthermore, the Business Plan suggests a figure of £100,000 for a self-build bungalow, and the appellant indicated that this could be affordable with a mortgage and help from family and friends. Be that as it may, there is little before me to explain how this figure has been arrived at or to show that it would realistically be sufficient to fund the actual cost of the dwelling that has been applied for.
31. For these reasons, I find that the financial information presented to me as part of the appeal offers limited confidence that the enterprise is currently financially sound and has a reasonable prospect of remaining so. Even if I were fully satisfied on these points, I am unable to determine that the enterprise would be able to adequately sustain the financial cost of constructing the dwelling applied for while also remaining financially viable.

Temporary Consent

32. The appeal proposes a permanent dwelling. Should this be unacceptable, the appellant has requested that I consider a temporary consent as an alternative. However, I have no firm details of a non-permanent dwelling, and I am not satisfied that it would be reasonable for a condition to require removal of a permanent dwelling at the end of any temporary period. In addition, my concerns that a requirement for a dwelling has not been adequately demonstrated would remain, even if it were a temporary dwelling. I am not therefore satisfied that this would be an appropriate course of action.

Conclusion on First Main Issue

33. On the strength of the evidence before me, I find that it has not been adequately demonstrated that a dwelling would be required for the operation of the enterprise at the appeal site. Even if it had been shown that a dwelling was required, it has further not been satisfactorily demonstrated that the enterprise is currently financially sound and has a reasonable prospect of remaining so, nor that it could also sustain the financial cost of constructing the dwelling applied for.
34. Accordingly, this is not a situation where Policy DM34 of the LP or paragraph 80 of the Framework indicate that a dwelling in the countryside may be acceptable. I conclude that the location of the proposed dwelling within the countryside would be contrary to the intention within Policy SS1 of the LP insofar as it seeks broadly to direct development towards the most sustainable locations. It would also be contrary to Policy DM1 of the LP insofar as it includes a requirement for proposals to maintain and maximise opportunities for linkages to the surrounding area and local services. The appellant suggested that this provision concerns the design of large developments, but this is not specified within Policy DM1 as it is written, and I am not persuaded that the requirement would be of no relevance here.

Character and Appearance

35. The appeal site is located within the Kent Downs Area of Outstanding Natural Beauty ('the AONB'), where the Kent Downs AONB Landscape Character Assessment Update 2020 Revised and Published in 2023 ('the KDLCA') indicates that it is part of the Mid Kent Downs Local Character Area ('LCA'), and

Bredhurst Sub-Area. Much of the LCA is described as having a strongly rural and peaceful feel and sense of isolation from settlements nearby. Other key characteristics are identified as including gently rolling chalk plateaux interspersed with steep dry valleys; large blocks of woodland; and a relatively sparsely settled area with a network of narrow enclosed lanes. The KDLC further comments that much of the Bredhurst Sub-Area is of high landscape quality, with features including a network of steep and narrow lanes and distinctive vernacular buildings with characteristic building materials of yellow stock brick, red brick, flint, Kent brick tiles and weatherboarding.

36. Scragged Oak Road is a narrow road, which for much of its length is closely lined by vegetation. There are some buildings present with a mix of uses, but these are typically scattered, and much of the surrounding area comprises open fields or paddocks or areas of woodland. As a consequence, there is a spacious and highly rural character and appearance to the area overall, and a notable tranquil quality to this part of the countryside. Although there are a number of existing structures on the appeal site, these have not been demonstrated to be lawful. The information before me indicates that the former condition of the appeal site was largely open and undeveloped, which I find would make a positive contribution to the distinctive rural character of the area, and to the landscape and scenic beauty of the AONB.
37. Even if I were to accept the appellant's suggestion that the barn and 3 sheds on the site are lawful, these are of modest scale and are grouped together at the rear where land levels are much lower than Scragged Oak Road. Their visual impact is therefore very modest, and they do not diminish the open and rural quality of the site and its contribution to the character and appearance of the area to any significant degree.
38. In contrast, the appeal proposes varied structures that would cumulatively be much larger in scale than the barn and sheds, and that would be dispersed across a substantial proportion of the site area.
39. The dwelling would be of simple design with a shallow pitched roof and limited fenestration or other detailing. Irrespective of the external materials, the result would be a plain and austere appearance that I agree with the Council would be more typical of a suburban location. The regular rectangular footprint and flat roof of each of the café/shop and machinery store and log store buildings would also give these structures a very boxy form. There would be fenestration to the café/shop and machinery store, but it would otherwise be a largely plain and fairly bland building, and even if cladding were applied to the shipping containers forming the log store as the appellant suggested at the Hearing, the lack of articulation or other visual relief would result in an unsightly, featureless structure. In my assessment, the design of the dwelling, café/shop and machinery store and log store would not relate well to their rural context, and they would appear as awkward and incongruous features on the site.
40. I acknowledge that polytunnels may not be unusual within a rural landscape. Nevertheless, they would each be fairly large, and with light-coloured covering that would form a highly conspicuous presence on the site.
41. The development would sit between Rosewood Farm and development including a dwelling at Poachers Pocket. However, the Council advised that temporary consent for development at Rosewood Farm including residential caravans has expired. In any event, recommendations of the Mid Kent Downs

LCA set out in the KDLCA include avoiding further ribbon development. The scale and large number of structures, hardstanding and outdoor storage spreading across much of the appeal site area would cause a significant loss of openness, and the impression of a fairly intense domestic and commercial use that would be decidedly urbanising. This would reinforce the existing ribbon on this part of Scragged Oak Road, and the unusually high density of built form would contrast unsympathetically with the generally scattered arrangement of buildings in spacious surroundings nearby. Comings and goings and activity at the site would further exacerbate the urbanising effect of the development, and would diminish the currently tranquil quality of the area and the remote, rural quality of the landscape.

42. I acknowledge that views from Scragged Oak Road of the rear part of the site are restricted by its much lower land level. Vegetation to the boundaries of the site would also provide some screening of the development, and the appellant has suggested additional planting including along the site frontage to supplement this cover. However, screening would not be complete, and it was clear from my observations of the existing site that the timber storage building, the farm shop/café and the two polytunnels nearest to the road would be at least partially visible from Scragged Oak Road including along the access of the appeal site and across an access to the adjacent site to the south west. The timber storage building and front polytunnel in particular would sit fairly prominently towards the front boundary of the site. In the absence of existing and proposed site sections, I am also unable to conclude that there would not also be some potential views of the dwelling.
43. The visual impact would be localised, but where there would be views of the development, there would be some impression of the spread of structures across the site and I find that it would be appreciated as an unwelcome and unsympathetic incursion into this part of the countryside. Furthermore, and irrespective of the available views, the development would fail to respect the distinctiveness of its surroundings and the character of the landscape.
44. The appellant has drawn my attention to other development in the locality, including at Rosewood Farm, Whitfield Shaw and Barngarth Farm. However, I do not have full details of the circumstances which led to these developments. In any event, they do not alter my view that the appeal proposal would be incongruous and urbanising and would lead to the erosion of the open and rural character of the appeal site.
45. I conclude for these reasons that there would be significant harm to the rural character and appearance of the area, and to the landscape character and scenic beauty of the Kent Downs AONB. As a consequence, there would be conflict with Policies SS1, SP17, DM1 and DM30 of the LP insofar as they together broadly seek high quality design which responds to areas of landscape value, protection for the rural character of the borough, and development that responds positively to and does not harm the character and appearance of an area. I am also mindful of the requirement under Section 85 of the Countryside and Rights of Way Act 2000 to have regard to the purposes of conserving and enhancing the natural beauty of AONBs. For the reasons above, the proposal would not conserve or enhance the natural beauty of the Kent Downs AONB.

Highway Safety

46. The vehicular access to the site is fairly wide as it joins Scragged Oak Road. However, the appellant acknowledges that it would not be possible to provide visibility splays towards the north east in accordance with the standard sought by the Highway Authority according to measured vehicle speeds.
47. Even where a vehicle exiting the appeal site took up a wide position, I saw at my visit that vegetation to the north east boundary of the site and along the frontage of the adjacent site significantly restrict visibility from the access towards the north east. As a result, vehicles leaving the site would be likely to travel some way onto the highway before there would be reasonable visibility of any oncoming traffic from this direction. Vegetation would also restrict views of the site access for vehicles approaching the site from the north east until they were fairly close, limiting their ability to anticipate movements from the site. I find that these conditions would be likely to result in potential for conflict between vehicles leaving the appeal site and vehicles on Scragged Oak Road.
48. The appellant highlights that it is an existing vehicular access which could be used without restriction. However, no assessment has been provided of the number of trips that would realistically be likely to result from the existing lawful use of the site. I consider having regard to the modest size of the site and in the absence of substantive evidence to the contrary that such movements would be likely to be relatively low in number.
49. Against this, the submitted Transport Statement sets out that the proposal would generate around 50 vehicle trips daily. The Council's Highways consultee has raised concerns that there is insufficient justification for the assumed number of trips associated with the plant nursery use and that no allowance has been made for trips associated with the café. However, even if I were to accept the appellant's figures, I consider on the basis of the information before me that the development would generate a significant increase in the number of vehicle movements at the site.
50. The appellant comments that no accidents have been recorded around the junction with Scragged Oak Road in the last 19 years. Be that as it may, the greater number of trips associated with the proposal would increase the potential for conflict with other road users, and while overall numbers of movements may be fairly small, there would be consequent detriment to highway safety.
51. For these reasons, I am not satisfied that vehicular movements associated with the proposal would be safely accommodated, and I conclude that the proposal would cause unacceptable harm to highway safety resulting in conflict with Policy DM1 of the LP.

Retail Use

52. Policy DM40 of the LP sets out that retail sales of fresh produce at the point of production outside of settlement boundaries will be permitted subject to certain criteria. These include that a significant proportion, based on annual turnover, of the range of goods offered for sale continues to be fresh produce grown and sold on the farm holding in question.
53. The appellant's evidence indicates that the enterprise's largest proportion of retail turnover has been plant sales. In the past, the Business Plan indicates

that around 75% of plants sold came from stock that had been brought in, but the appellant indicates that around 90% of plants sold are now grown on site, and I have no firm reason to doubt that it would be realistic for a substantial proportion of plant sales to come from stock grown on the site. Chickens and eggs produced on the site have contributed further retail turnover, albeit a much smaller proportion. Log sales account for a fairly large proportion of the enterprise's overall turnover, but I heard that this is mostly through deliveries and that retail sales made from the site itself are a small element.

54. From the information before me, future retail turnover would come from broadly similar sources, although the appellant proposes some additional sales of honey and fish fry that would be produced on the site, and a small proportion from items brought in from elsewhere.
55. Policy DM40 does not define what is meant by 'a significant proportion', and I have not been directed to any relevant guidance on this point. However, I find that the proportion of goods offered for sale which the evidence before me suggests would comprise fresh produce grown and sold at the appeal site could reasonably be described as significant. I consider that it would in principle be possible and appropriate to secure as much by way of a planning condition, albeit that any such condition should in my view specify a minimum percentage of goods to be fresh produce from the site to ensure that it would be suitably precise, enforceable and reasonable in terms of making clear what would be expected. This is not included in the Council's suggested condition which simply seeks details of the source of different goods to be sold, and had I been minded to allow the appeal, I would have needed to consider further the appropriate percentage to be specified. However, as I am dismissing the appeal for other reasons and it could not alter my decision, this has not been necessary.
56. Although the enterprise would not be entirely agricultural, the retail element of the proposal would contribute to the rural economy and would support the maintenance of the land on the site. Subject to a condition, I conclude on this main issue that the retail use would be acceptable and would accord generally with Policy DM40 of the LP. On that basis, I find that the proposed retail use would not in itself unacceptably undermine the objectives of Policies SS1 or DM1 of the LP insofar as they broadly direct development towards the most sustainable locations with linkages to the surrounding area and local services.

Other Considerations

57. The Framework sets out that significant weight should be placed on the need to support economic growth and productivity, and that decisions should enable the sustainable growth and expansion of all types of business in rural areas. The proposal would generate employment and would contribute to the rural economy. I also note many representations submitted in support of the proposal including comments which highlight how the existing services are valued by local residents, and I have no firm reason to doubt that the development would contribute to the local community and its vitality. Although I give significant weight to these benefits, the contributions would in each case be limited by the small scale of the proposal.
58. There is no substantive evidence before me to show that there would be no realistic prospect of active management of the appeal site in the absence of the

appeal development. I therefore give only limited weight to the management of the site as a benefit in favour of the proposal.

59. There is designated Ancient Woodland to the rear of the appeal site. The proposal shows that the barn, sheds, greenhouses, mobile home and a concrete slab on the closest part of the site to the woodland would be removed, and a 15m buffer would be created on the site. However, it has not been demonstrated that the structures which currently sit within the area of the proposed buffer are lawful, and this limits the weight that I afford to their removal as a benefit of the appeal.
60. I also have no firm details of suggested new planting on the site. Details could be secured through a planning condition, but the extent of any benefits including to biodiversity or the character and appearance of the area are therefore unclear, and the weight that I can afford to this factor is limited.
61. The appellant commented at the Hearing that having a dwelling on the site would reduce vehicle trips that would otherwise result from the need to travel to the site from elsewhere in connection with the running of the enterprise. However, occupiers of the site would need to travel to access other day to day services, and I have no firm evidence to show that there would be a significant reduction in the number of trips overall.

Personal Circumstances

62. The appellant and their family are currently living on the appeal site. Any enforcement against the existing development on the site would be a matter for the Council. That said, I consider in this case that dismissal of the appeal would contribute towards loss of a potential home for the appellant and their family, interfering with their private and family life.
63. Article 8 of the Human Rights Act 1998 ('the HRA') states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, and interference may be justified where it is in accordance with the law and is necessary in a democratic society in the interests of, amongst other things, the economic well-being of the country, which may include the protection of the environment and upholding planning policies. Article 1 of the First Protocol of the HRA further provides that everyone is entitled to the peaceful enjoyment of their possessions and that no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
64. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. At the outset I have regarded no other consideration as more important, and in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision. Children also have the protected characteristic of age under the Public Sector Equality Duty contained in the Equality Act 2010 ('the PSED') which sets out the need to, amongst other things, advance equality of opportunity between persons who share a relevant

protected characteristic and persons who do not. I have therefore had due regard to the PSED.

65. The appellant advised that they had no alternative residence to the appeal site, and that other accommodation in the local area would be unaffordable to them. I heard that they have strong relationships with the local community, and that the children on the site attend or are due to attend local schools. Moving from the site could result in a loss of stability with disruption to the children and their education, and I have noted the appellant's comments regarding the needs of the children and potential diagnoses and the financial and personal implications should they have to leave the site. I acknowledge that the residential use of the site is unauthorised, albeit that the appellant's evidence suggests this was an oversight on the part of a previous planning advisor. Be that as it may, I consider from the information before me that there would be clear benefits to the appellant and children in remaining on the site, and I attach significant weight to the personal circumstances in this case.

Planning Balance

66. The Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs, and Policy SP17 of the LP sets out that great weight should be given to the conservation and enhancement of the Kent Downs AONB. I have found that the proposal would cause significant harm to the landscape and scenic beauty of the Kent Downs AONB, and I attach great weight to this harm. There would also be significant harm to the character and appearance of the area more generally, harm to highway safety, and the location of the proposed dwelling within the countryside has not been adequately justified. As such, there would be conflict with the provisions of relevant policies of the development plan, and it has not been argued that these policies are out of date for any reason.
67. On the other hand, the active management of the site, the creation of a buffer to the adjacent Ancient Woodland, new planting, and the reduction in vehicle trips should a dwelling be provided attract limited weight in favour of the proposal for the reasons given above, and the economic benefits of the proposal would be limited in extent.
68. Even giving significant weight to the appellant's personal circumstances and with the best interests of children as a primary consideration, I find that the considerations in favour of the proposal would not be sufficient to outweigh the cumulative harm that I have identified.
69. I have considered whether the harm that I have identified could be reduced or overcome by the imposition of a time-limited condition, albeit that I have no firm details to demonstrate how a temporary permission could realistically and reasonably be granted in this case having regard to the permanent nature of the buildings applied for. However, I consider that the cumulative harms associated with the proposal are so great that even if they were not permanent, they would still outweigh the other considerations in this case. Whether individually or collectively, no other conditions would overcome the harm identified to enable the grant of planning permission.
70. My findings therefore point to the dismissal of the appeal which would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol of the HRA. However, these rights are not unqualified. The interference in this

instance would be in accordance with the law and necessary in a democratic society in pursuance of well-established and legitimate aims to protect, amongst other things, the AONB and countryside and to promote sustainable development. Furthermore, the relevant aims could not be achieved by less imposing means. In these circumstances, I find that interference with the appellant's rights would be proportionate, and that dismissal of the appeal would be the minimum necessary. The effect on those affected, and including the particular interests and accompanying rights of the children, would not be excessive or disproportionate.

Conclusion

71. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon McKay	SJM Planning
Samantha Bennett	
Daniel Field	

FOR THE LOCAL PLANNING AUTHORITY:

Kate Altieri	Maidstone Borough Council
Henry Doble	Acorus Rural Property Services
Katie Miller	Kent Downs AONB Unit

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Application comments dated 19 May 2023 from Kent County Council Highways & Transportation, submitted by the Council
- 2 Application comments dated 19 May 2023 from Henry Doble, Acorus Rural Property Services, submitted by the Council