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# Appeal Decision

Site visit made on 18 April 2023

**by G Sylvester BSc (Hons) MSc MRTPI**

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

**Decision date: 4 August 2023**

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**Appeal Ref: APP/M2270/W/22/3305766**

**Four Square Oast, Old Hay, Brenchley, Kent TN12 7DG**

- 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 Mr Roger Ludgate against the decision of Tunbridge Wells Borough Council.
  - The application Ref 21/03861/Full, dated 15 December 2021, was refused by notice dated 11 March 2022.
  - The development proposed is the repair and reinstatement of a four kiln former Oast House.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The Council refers to several policies from its emerging Local Plan and Paddock Wood's Neighbourhood Development Plan. However, the planning application was not refused due to conflict with those policies. I have assessed the appeal on the basis of the policies referred to in the Council's reasons for refusal.

## Main Issues

3. The main issues are:
  - Whether the use of the property has been abandoned, such that the proposal is for a new build dwellinghouse.
  - If the proposal is for a new dwellinghouse, whether the location of the proposed development would be appropriate for new housing, with particular regard to accessibility to local facilities and services.
  - The effect of the development on biodiversity.

## Reasons

### *Abandonment*

4. The appellant purchased the appeal property, a former Oast House, in the late 1970s and from the 1980s he ran his car restoration business on the ground floor of the building and lived on the upper floors with his family. Most of the building was destroyed by fire in October 1997 and the building has remained in its post-fire state with only minimal work to keep the site tidy and remove dangerous elements of its structure, pending available funds to restore.

5. 'Abandonment' is a legal concept used by the Courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use.
6. The parties refer to the *Iddenden*<sup>1</sup> judgement, which found that a use cannot survive if the buildings and installations necessary to sustain it are removed or destroyed.
7. The appellant refers to the 4 tests of abandonment in caselaw. In the case of *Castell-y-Mynach*<sup>2</sup>, the Court established four criteria for assessing whether a use had been abandoned. These are: (1) the physical condition of the building; (2) the period of non-use; (3) whether there has been any other use; and (4) the owner's intentions as to whether to suspend the use or cease it permanently.

*Physical condition*

8. The building suffered substantial fire damage in 1997 and the physical condition of the building appears to be very poor. Although the external walls of the building up to first floor level are largely present, the brickwork around several apertures is missing, as are several windows. The walls at second floor level and the entire roof structure of the main building are missing exposing it to the elements. Most of the building's upper floors appeared to be missing and the few metal beams of the superstructure that remain appeared to be twisted and distorted.
9. The appellant's 'Technical Note: Initial visual site inspection' (TN), produced by a Principal Engineer, records that the south facing masonry wall exceeds stability guidelines and is being supported by timber beams. The brickwork of the two northern kilns is stated to mostly be in reasonable condition. A small amount of minor-to-medium subsidence in the northwest corner was noted. The TN describes that only 50% of the brickwork of the walls of the western kilns is still standing.
10. The support piers that originally supported the largely missing steel superstructure and roof are in poor condition, with the TN advising they be removed due to visible lean and corrosion damage. Vegetation is growing in various places in the building's interior and on its walls, and a tree is causing cracking to its north facing wall.
11. The TN advises that most of existing masonry construction can be salvaged, although it would be prudent to construct an additional internal masonry leaf, if the existing substructure is suitable. I find no evidence to confirm that it would be suitable. The TN goes on to advise that the steel superstructure should be replaced upon reinforced concrete foundations.
12. Given the extent of the building works required to reinstate the building to that shown on the plans, including the need for concrete foundations for the steel structure, a new roof structure and upper floors, and potentially an additional internal masonry leaf, I find that the works go beyond repair and reinstatement works. They constitute a complete rebuilding of the structure of some considerable scale and extent.

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<sup>1</sup> *Iddenden v SSE* [1972] 1 WLR 1433

<sup>2</sup> *The Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40

13. I find that the physical condition of the remains of the building is very poor and would give the impression to a reasonable observer that its use has been abandoned. However, the physical condition of the building is not by itself decisive.

*Period of non-use and any other use:*

14. The appellant claims that prior to the fire in 1997, the building was subject to a mixed use of car restoration on the ground floor with living accommodation on the upper floors. The Council dispute that the residential use of part of the building was lawful.
15. Even if the residential element of the claimed use of the appeal building was lawful before the fire, there has been no residential occupation of the building since then. However, a lack of occupation does not, on its own, equate to the abandonment of a lawful use and it is necessary to consider the appellant's intentions.
16. The appellant states that his family continued to live on the site after the fire in a mobile home and Council Tax for the mobile homes continued to be paid until 2011. However, that is not the same as living in the appeal building and it does not change my view that the residential use of the building ceased with the fire.

*Intention*

17. The appellant states that it was always his intention to live in the appeal building again. The appellant says this is evidenced by the work that has already been undertaken and the submission of this planning application.
18. However, the submitted drawings show a dwellinghouse across all floors and not the stated mixed use of residential and commercial that existed prior to the fire. There is little evidence regarding the scale and nature of the remedial work already undertaken on the building, apart from some visible timber posts that are stated to stabilise deflecting masonry walls.
19. I have not been referred to any substantive evidence of any repairs to the building or that the appellant has sought to invest in making the building wind and watertight with a view to resisting its further physical deterioration since 1997. I have not been referred to any previous planning applications for remedial works to the building. The planning application the subject of this appeal was submitted in 2021. Furthermore, the fact that the appellant built a house next door to the appeal building and currently lives in it, is a further indication that weighs against the appellant's intentions.
20. Based on these factors, I am not persuaded on the evidence available, that the appellant intended to continue the use of the appeal building.

*Conclusion on abandonment*

21. Drawing together the available evidence on the condition of the building, its period of non-use and the owner's intentions, it seems likely to me that a reasonable observer would consider that the use of the building has been abandoned.
22. I therefore find that the appeal proposal would amount to the provision of a new dwellinghouse as opposed to the conversion of an existing building or its

repair/reinstatement. Therefore, the proposal would not meet the criteria set out in Policy H13 of the Tunbridge Wells Local Plan (Adopted March 2006) (LP), which requires existing buildings outside the Limits to Built Development (LBD) to be capable of conversion, without extensive alteration or rebuilding.

### *Location of the Development*

23. Policy LBD1 of the LP explains that outside the LBD, development will only be permitted where it would be in accordance with other development plan policies. The purpose of LBDs is to concentrate development within built-up areas where there are services and facilities to reduce the need to travel and promote sustainable patterns of development, and restrict encroachment of built form into surrounding areas.
24. Core Policy 14 of the Tunbridge Wells Borough Local Development Framework - Core Strategy Development Plan Document (Adopted June 2010) (CS) sets out the Borough's strategy for development in the villages and rural areas. The strategy seeks to ensure, amongst other objectives, that new development will generally be restricted to sites within the LBD and that outside the LBD of villages, affordable housing to meet an identified local need will be allowed.
25. The appeal site is located outside of the LBD and therefore the appeal proposal would not comply with Policy LBD1 of the LP. Furthermore, the proposed dwelling would not comply with the approach to development in Core Policy 14 of the CS, which sets out the types of development acceptable in villages and rural areas.
26. The facilities and services in the settlement of Paddock Wood are the closest to the appeal site at a distance of some 1.75km. Walking or cycling journeys to Paddock Wood would mainly be along unlit rural lanes with no footpaths. The road serving the appeal site (Old Hay) is a narrow concrete road serving several large commercial premises, including a metal recycling and car dismantling businesses, and several homes. Although only a snapshot in time, I observed a regular flow of commercial vehicles travelling along Old Hay at my site visit and I have no substantive evidence that the conditions I observed were abnormal. I have not been made aware of any public transport provision between the site and Paddock Wood or any other settlement with services or facilities to meet day-to-day needs. Although there are public footpaths nearby, these would generally provide leisure routes across fields for recreational purposes.
27. I find that the nature and conditions of the route between the appeal site and Paddock Wood, including the types of vehicles using the nearby roads, would make such journeys particularly unattractive for pedestrians and most cyclists, as well as more vulnerable groups such as children (particularly in pushchairs), persons with restricted mobility and wheelchair users. This would be especially so during the hours of darkness and during inclement weather.
28. Accordingly, I find that future occupiers of the proposed dwelling would be heavily reliant upon private vehicles to meet most, if not all, every day travel needs. The absence of an objection from the Local Highways Authority does not alter my conclusion on the attractiveness of the location for taking journeys by walking and cycling.

29. I acknowledge that existing residents in the area would be equally reliant on private car travel to reach service and facilities. However, this does not provide a justification for new development in locations where occupiers would be heavily reliant on travel by car, with few opportunities for sustainable travel. As such, the proposal would conflict with the approach to development in Policy LBD1 of the LP and Core Policy 14 of the Core Strategy, which seek to focus housing growth in the most sustainable locations that minimise the need for travel and promote alternative transport to the car.
30. There would also be conflict with the objectives in Paragraphs 104(b) and 105 of the National Planning Policy Framework (2021) (the Framework), which set out that decisions on development proposals should pursue opportunities to promote walking and cycling, and actively manage patterns of growth to support these objectives.
31. I therefore conclude that the proposed dwelling would not be in an appropriate location for new housing, with particular regard to accessibility to local facilities and services. It would therefore conflict with the local and national policies set out above.
32. Although the Council has cited a conflict with Core Policy 6 of the CS, this policy is strategic in nature, setting out the Borough's strategy for delivering housing to meet its needs. As such, this policy is not relevant to this main issue, and I find no conflict with its objectives.
33. Although the Council has cited a conflict with Paragraph 152 of the Framework, this paragraph sets overarching objectives for the planning system, including shaping places that contribute to radical reductions in greenhouse gas emissions, and encouraging reuse of buildings. I have found the proposed development to be car reliant. However, given its scale, the evidence before me does not demonstrate that it would be contrary to achieving radical reductions in greenhouses gases.

#### *Biodiversity*

34. The appeal site lies within the countryside and is overgrown in some places by vegetation, particularly the tree growing close to the northern elevation. The part of the building named as the northern extension appeared to have a relatively intact roof covering and could be inhabited by protected bat species. There are cracks and crevices in the brickwork and enclosed parts of the building that could be inhabited by protected species. Furthermore, there are trees and vegetation nearby, and a large pond on land to the north, which could provide habitats for species and linkages to the appeal site. Given the nature of the appeal site and its immediate surroundings, I find there is a reasonable likelihood of protected species being present on the appeal site.
35. Circular 06/2005 "Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system" states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances..."

36. I therefore consider that ecological survey work should be completed before permission could be granted even were the proposals to be acceptable in all other respects. This is necessary to ensure that any required protection measures are secured through conditions imposed on a planning permission.
37. In the absence of a protected species survey, I cannot be certain that protected species would not be harmed by the appeal proposal. Whilst the appellant states he was not asked for a survey when the planning application was validated, this does not alter my conclusion on this main issue. As such, the proposal would conflict with the element of Core Policy 4 of the CS, which seeks to protect biodiversity. It would conflict with Paragraph 179(b) of the Framework which seeks to protect species and habitats.
38. A net gain in biodiversity could have been secured by condition if the appeal proposal was acceptable in all other respects. However, this would not outweigh the overall harm and policy conflict arising from the absence of a protected species survey.

### **Other matters and planning balance**

39. I have found that the proposed dwelling would conflict with the approach to development in Policy LBD1 of the LP and Core Policy 14 of the CS, which seek to focus housing growth in the most sustainable locations that minimise the need for travel and promote alternative modes of transport to the car. There would also be conflict with Core Policy 4 of the CS, which seeks to protect biodiversity.
40. Although these policies pre-date the current version of the Framework they are consistent with the Framework's objectives in Paragraphs 104(b) and 105 of the Framework, which set out that decisions on development proposals should pursue opportunities to promote walking and cycling, and actively manage patterns of growth to support these objectives. Core Policy 4 of the CS is consistent with Paragraphs 179(b) and 180(a) of the Framework which seeks to protect species and avoid significant harm to biodiversity.
41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
42. The appeal proposal would make a small contribution to housing supply. It would generate short term employment opportunities during construction and longer-term benefits through the new resident households supporting the economy and services. However, the economic and social benefits attributed to the construction and occupation of a single dwellinghouse would be small.
43. The building is a non-designated heritage asset. The Council's Conservation Officer assesses the heritage value of the proposed development as low, given that it would replicate the appearance of the Oast House that had undergone substantial alteration and was not considered to be an accurate representation of a traditional Oast format. There is no substantive evidence before me to contradict this assessment. I therefore have no basis to disagree, and I give limited weight to the heritage benefits of the appeal proposal replicating the former Oast House.
44. The environmental benefits of reusing the existing fabric of the former Oast House are of limited weight given the substantial amount of new building



materials that will be required to complete the proposed development. The proposed development would appear capable of meeting the objectives of Core Policy 5 of the CS, which seeks to encourage sustainable design and construction principles and combat climate change. However, the environmental benefits would be small given the scale of the development.

45. The appeal site is located to the side of a long and narrow concrete road that is mostly lined by trees and hedgerow. The road serves several dwellings and large commercial premises. There are groups of large industrial type buildings set within expansive hardsurfaced yards, including what appeared to be car dismantling and metal recycling uses. During my visit there was a steady flow of commercial vehicles travelling along the road, emphasising the commercial uses in the area. Based on these characteristics and my observations, I find the area to be semi-commercial in character, particularly near to the appeal site.
46. In this context, the appearance of the appeal building causes only a minor level of localised harm, particularly as it is substantially screened in all but close distance views from the access road, the Public Right of Way and a small number of nearby properties, by the trees and vegetation growing on nearby land. Although the land around the building is untidy, it is well screened by the tall brick boundary walls. Furthermore, the large building opposite tends to draw the eye away from the appeal site when travelling along the road. For these reasons, I find that the appeal proposal would amount to a modest enhancement to the character and appearance of the area, consistent with the element in Core Policy 4 of the CS, which seeks to conserve and enhance local distinctiveness and character, and to which I give limited weight in its favour.
47. The parties dispute whether the appeal site is previously developed land. Even if it was, the benefits of reusing a small area of such land for a dwelling would have limited weight in favour of the proposal.
48. I note the appellant's point over the unfairness of not being granted permission to reside in the former Oast House again. However, given my findings on the issue of abandonment, the appellant's personal circumstances hold negligible weight.
49. I note the representations of support from nearby occupiers. However, having found harm and conflict with the policies of the development plan, the support given has negligible weight in favour of the proposal.
50. Whilst the occupiers of the 3 converted outbuildings to dwellings permitted by the Council (ref. 21/03297) on nearby land would also need to travel to nearby settlements, most likely by private car, the conversion of rural buildings to residential use is supported by Policy H13 of the LP. As the appeal proposal amounts to a new-build dwelling and not the conversion of a building, the planning considerations are different, and the planning permission granted by the Council has limited relevance my considerations.
51. An absence of harm to the living conditions of nearby occupiers, flooding or highway safety does not weigh in favour or against the proposal.
52. There were no objections from the Parish Council or the Local Highways Authority. However, an absence of objections does not weigh in favour or against the proposal.

53. The proposal would be consistent with Policy EN25 of the LP, which sets out the criteria for the conversion of rural buildings outside LBDs. However, an absence of harm in respect of the criteria in this policy would not weigh in favour or against the proposal. Furthermore, as I have found above, the proposal amounts to rebuilding as opposed to conversion, and the conversion of rural buildings to residential use falls most squarely on Policy H13 of the LP.
54. The appeal proposal's benefits are therefore not sufficient to outweigh its conflict with the development plan as a whole and the harms that I have identified, including to the Council's development strategy for sustainable growth.
55. The Council is currently unable to demonstrate a five year supply of deliverable housing sites. The supply as at 1 April 2022 is stated as 4.49 years and the evidence before me does not contradict this figure. As such, there is a shortfall against the housing requirement for the area. In these circumstances paragraph 11.d)ii. of the Framework applies and permission should be granted, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
56. I have taken account of the Framework's objective of boosting housing supply. The proposed development would make a small contribution to the housing supply in the area. However, for the reasons given above, I have already found that the economic and social benefits attributed to the construction and occupation of a single dwellinghouse would be small. For the reasons given above, the benefits of rebuilding the non-designated heritage asset and its enhancement of the character and appearance of the area are benefits of limited weight. The benefits attributed to reusing a small area of brownfield land, reusing the existing fabric of the appeal building and incorporating sustainable design and construction into the appeal development have limited weight.
57. However, I find there would be conflict with the Framework in so far as the future occupiers of the proposed dwellinghouse would be heavily reliant on the private car for nearly all journeys, contrary to sustainable travel objectives of and promoting walking and cycling, and actively managing patterns of growth to support these objectives. Protected species are likely to be present. The appeal proposal has not satisfactorily addressed the potential impact on protected species and therefore I have not been able to secure any necessary mitigation, amounting to harm. For these reasons, the appeal proposal's adverse impacts would significantly and demonstrably outweigh the cumulative benefits when assessed against the policies in the Framework as a whole. As a result, the proposed development does not benefit from the Framework's presumption in favour of sustainable development.

## **Conclusion**

58. For the reasons given above, the appeal proposal conflicts with the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding. Therefore, the appeal should be dismissed.

*G Sylvester*

INSPECTOR