



Appeal Decision

Site visit made on 13 October 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Appeal Ref: APP/U1430/W/22/3311075

Hooters, Moat Lane, Westfield TN33 0RY

- 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 and Mrs M Hawkins against the decision of Rother District Council.
 - The application Ref RR/2021/3023/P, dated 15 December 2021, was refused by notice dated 5 July 2022.
 - The development is construction of storage barn (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The use of the barn is disputed. Nevertheless, the application was for the construction of a storage barn. Throughout the evidence the appellants have specified that the intended use of the barn is for agricultural purposes. I have therefore assessed the proposal on this basis. I am aware of the ongoing enforcement action being undertaken by the Council in relation to the construction and use of the barn; however, my decision is without prejudice to that action. There are also representations from both the appellants and interested parties discussing the use of the site, including activity unrelated to the appeal proposal, as well as an ongoing legal dispute. My decision is based upon the acceptability of the appeal proposal only.
3. On the application form the appellants have indicated that the barn has been constructed. During my site visit I observed a barn which matched the application plans, I have therefore considered the appeal on a retrospective basis.

Main Issues

4. The main issues are:
 - whether the need for the barn has been demonstrated,
 - the effect of the proposal on the character and appearance of the High Weald Area of Outstanding Natural Beauty (AONB), and
 - whether the proposal would satisfactorily address the loss, or otherwise, of habitat for protected species, including ancient woodland.

Reasons

Need

5. Policy RA3 of the Rother Local Plan, Core Strategy (CS), September 2014, explains that new agricultural buildings demonstrably needed to support farming that are of appropriate size, siting, design and materials, and directly related to the enterprise, will be supported by the Council.
6. The purpose of the barn is to store heavy machinery, food and equipment required to care for livestock, alongside the storing of equipment, plant and machinery necessary to maintain Hooters. There is no evidence detailing the forecasted number of pigs and chickens that will be kept as part of the enterprise nor the amount of feed required to be kept on site, or the necessary machinery or equipment to ensure the safe keeping of these animals. Hooters is a large property, and it is reasonable to have some external storage for equipment, plant and machinery necessary to maintain the property. However, the extent of the necessary items to maintain the property has not been sufficiently demonstrated. Therefore, I have insufficient evidence to be able to conclude that the size of the barn is appropriate.
7. In the appellants' appeal statement they state, "A planning application was not assumed to be required due to the works being to restore a pre-existing structure" and "The 'development' refers to the reinstatement of the barn. Replacing the roof and structural elements has not cause any impact or harm ...". However, figure 5 of their statement shows a map of the appeal site, including the previous dwelling and 11 outbuildings. None of which are sited in the same location as the barn, subject to this appeal. Moreover, the appellants explain that the barn has been enlarged. Based on the evidence before me, I conclude that the barn present on site is a new structure and not the restoration of a previous structure.
8. Several outbuildings have been removed which were described as not fit for purpose. Irrespective of what was previously present on the premises, there is no substantive evidence which demonstrates the need for the barn.
9. In conclusion, the need for the barn has not been demonstrated. The development is contrary to CS policy OSS3, which indicates that consideration will be given to the spatial strategy for a particular area, and CS policy RA3, for the reasons given above.

Character and appearance

10. The appeal site is located within the High Weald AONB, an area designated for its landscape and scenic beauty. The surrounding area is characterised by the verdant landscape, including large pockets of woodland. Agricultural and equestrian buildings are scattered across the landscape and there is a loose pattern of ribbon development along Moat Lane, comprising a few dwellings.
11. The appeal site forms part of the land attached to a large property, Hooters, and a detached garage as well as a large amount of surrounding land. This includes a formal garden area and a piece of land which appears to be recently cleared, surrounding the barn. The barn is cut into the slope of the land and is surrounded by a gravelled area, this leads to the extended driveway which is located between Hooters and the detached garage. The barn is sited between an area of ancient woodland and a neighbouring property.

12. The clearance of an area of established woodland and installation of a gravelled area to site the barn has had a harmful effect on the verdant and sylvan character of the area and consequently the landscape and scenic beauty of the AONB.
13. Given the siting of the barn and established landscaping it is largely screened from wider public views. The modern design and utilitarian appearance is similar to several other agricultural buildings within the AONB. Nonetheless, the woodland clearance and installation of gravel has detrimentally changed the character of the area and is a harmful intrusion in the AONB.
14. The appellants contend that the felling of the trees is not related to the construction of the barn and that they were permitted to fell the trees regardless of the development. The Forestry Commission has issued a restocking notice identifying that the felling of the trees was in contravention of the provision of the Forestry Act 1967. Likewise, planning permission for the replacement dwelling did not permit the felling of the trees as they were outside of the application boundary.
15. Whilst the appellants have kept animals on the land and maintained the borders of the whole site, the barn is not located in the private garden. It is located on a section of land which functions as a transition between the neighbouring property and the ancient woodland and is separate from the formal garden immediately surrounding Hooters. This area appears to historically be characterised by dense vegetation. In issuing the restocking notice, the Forestry Commission implicitly agrees with this assessment. In forming the above assessment, I am mindful of the *Rockall v DEFRA* judgement¹.
16. The proposal has a harmful effect on the character and appearance of the High Weald AONB. It is contrary to CS policies OSS3, OSS4, RA2, RA3, EN1 and EN5 and policies DEN1, DEN2 and DEN4 of the Development and Site Allocations Local Plan (DASA), December 2019. These policies indicate that the landscape character of the AONB shall be conserved; proposals should be considered in the context of the character of the landscape; land-based economic activities will be encouraged where it does not detract from the character and appearance of the locality; and development in the countryside should not adversely impact the landscape.

Protected species

17. A Preliminary Ecological Appraisal (PEA) was submitted with the application. However, the PEA refers to the site in its current condition and does not relate to the site as it was before the barn was constructed. There is habitat in proximity to the appeal site and may have been present on the site prior to the clearance, which is suitable for protected species including bats, breeding birds, reptiles, great crested newts, and invertebrates. There is no substantive evidence before me, to explain how protected species were not affected by the construction of the barn.
18. The made ground surrounding the barn is within 15m of the ancient woodland. This is contrary to Natural England's and the Forestry Commission's standing advice; the buffer is recommended to avoid root damage to ancient woodland.

¹ *Rockall v Department for Environment, Food and Rural Affairs* (Rev 1) [2008] EWHC 2048

Given the barn is cut into the slope of the land, the potential manoeuvring of heavy machinery could cause harm to the roots of ancient woodland.

19. I acknowledge the recommendations of the PEA have been produced by a suitably qualified ecologist and the appellants' son has experience of identifying protected species. However, the assessment is lacking substantive and site specific evidence detailing the circumstances of the site prior to the erection of the barn. Therefore, I cannot conclude that the recommendations offer appropriate mitigation for the loss of habitat for protected species.
20. The proposal does not satisfactorily address the loss of habitat for protected species, including its effect on ancient woodland, it is therefore contrary to CS policy EN5 and DASA policy DEN4. These policies indicate biodiversity will be protected and enhanced, and development proposals should seek to conserve and enhance the biodiversity value of irreplaceable habitats including ancient woodland.

Other Matters

21. I am satisfied that a planning notice was displayed in a timely manner in an appropriate location, during the determination of the planning application. Furthermore, the local authority assessing the planning application without visiting the site and the officer not living locally, does not alter my assessment on the acceptability of the development.

Conclusion

22. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR