



Appeal Decision

Hearing held on 17 and 18 October 2023

Site visit made on 18 October 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31/01/2024

Appeal Ref: APP/G2245/C/21/3288583

Part of land and associated buildings at Maplescombe Farm, Maplescombe Lane, Farningham, Kent DA4 0JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by FC Stark Ltd. against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 9 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the land and associated buildings (Barn A and Barn B) for the storage of vehicles (88), motor vehicle repairs and motor vehicle spraying.
- The requirements of the notice are: a) Cease using the land and associated buildings for the storage of vehicles (88), motor vehicle repairs and motor vehicle spraying; b) Remove all paraphernalia and equipment connected to motor vehicle repairs and motor vehicle spraying from the land and associated buildings; c) Remove all cars in storage from the land and associated buildings; d) Remove all containers from the land and associated buildings; and e) Remove all containers from the land and associated buildings.
- The period for compliance with the requirements is: 6 months from the date on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Hearing was combined with appeal APP/G2245/W/23/3318975, against the decision of the Council to refuse planning permission for conversion of 6 agricultural buildings, including Barns A and B of this appeal, into 10 dwellings and the demolition of 3 additional agricultural buildings, in conjunction with associated parking, amenity area and landscaping.
2. On 22 November 2023, all designated Areas of Outstanding Natural Beauty in England were renamed National Landscapes. This did not affect their legal designation or policy status, so it was not necessary to revert to the parties.
3. The National Planning Policy Framework ("the Framework") was revised after the Hearing but there were no changes material to the issues considered in the appeal on ground (a), so it was not necessary to revert to the parties.

The Notice

4. The reference to "storage of vehicles (88)" in the breach of planning control and requirement a) should read "storage of vehicles (B8)". The parties agree this may be corrected and varied without injustice. Requirement e) duplicates requirement d) and it would cause no injustice to vary the notice by deleting it.
5. It is suggested, in the appeals on grounds (d) and (f), that requirements b) to e) may be interpreted as seeking the demolition of Barns A and B due to the words "and the associated buildings". The Council confirms this was not intended, so it would be reasonable, and would cause no injustice, to vary those requirements to make that clear and avoid any risk of misinterpretation.

The appeal on ground (d)

6. For an appeal on ground (d) to succeed, it must be shown that it was too late for enforcement action to be taken on the date the notice was issued. It would therefore need to be demonstrated that the change of use of the land and associated buildings (Barn A and Barn B) for the storage of vehicles, motor vehicle repairs and motor vehicle spraying was instituted on or before 9 November 2011, 10 years before the notice was issued. It would also need to be demonstrated that the use continued thereafter without significant interruption. The burden of proof falls to the appellant and the matters must be demonstrated on the balance of probability.
7. This ground of appeal is brought in respect of the erection of Barns A and B only, should the inclusion of the words "and the associated buildings" in steps b), c), d) and e) have the effect of seeking their demolition. However, the notice does not allege that any building has been erected without authorisation and aerial images confirm that Barns A and B existed as long ago as 2007, thereby pre-dating the change of use and not being integral to it.
8. Accordingly, I am satisfied that while steps b) to e) require paraphernalia and equipment, cars in storage, and containers to be removed from the land, including from the buildings, they do not require the removal of the buildings.
9. Therefore, while the appeal on ground (d) must fail, I shall correct the notice to avoid misinterpretation in this regard.

The appeal on ground (a)

10. The main issues in this ground of appeal are:

- Whether the change of use constitutes inappropriate development in the Green Belt ("the GB").
- Its effect on the openness and purposes of including land in the GB.
- Its effect on the character and appearance of the area, with particular regard to the landscape and scenic beauty of the Kent Downs Area National Landscape ("the NL") and its setting.
- Its effect on the significance of Maplescombe Farm House, a designated heritage asset.
- Its effect on the living conditions of nearby occupiers.

- If the change of use constitutes inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the change of use is inappropriate development

11. At the time of my site visit, 3 vehicles, a trailer and a boat were parked or stored on the land but away from Barns A and B, in a former slurry pit to the north of Barn B and within the land subject of the notice. There is nothing to suggest this differs from the situation when the notice was issued. Neither is there anything to indicate that the storage of the boat and 2 of the motor vehicles, which were disused ambulances, has any functional or physical connection with the motor vehicle repairs and motor vehicle spraying. Furthermore, while there were dismantled vehicles within Barn B, they were evidently there to be repaired and/or sprayed.
12. The notice also applies to an area fronting Maplescombe Lane, but there is no evidence of any use of this area other than by the passage of vehicles across it, using an extant access that serves other land as well.
13. While the mixed use alleged in the notice must be considered as a whole, it is informative to consider and assess the separate elements that constitute it. Section 177(1) of the Act provides that planning permission may be granted on appeal against an enforcement notice in relation to the whole or any part of the matters stated in the notice or in relation to the whole or any part of the land to which the notice relates.
14. Paragraph 155 of the Framework identifies certain forms of development, other than the construction of new buildings, that are not inappropriate in the GB. This is subject to their preserving the openness of the GB and not conflicting with the purposes of including land within it. Included, at 155e), are "material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)".
15. The words 'such as' indicate that 155e) is not an exhaustive list of uses that may be found to not be inappropriate. However, the exclusion it provides should only apply to uses that compare closely with the examples given. Those examples may be defined by the presence of green infrastructure throughout the site, which the vehicle storage I saw does not achieve. Consequently, and viewed in isolation, the vehicle storage element constitutes inappropriate development. The mixed use is therefore inappropriate development within the GB by reason of that element. It is thus harmful by definition and should only be approved in very special circumstances.
16. However, the re-use of buildings of permanent and substantial construction is not inappropriate development in the GB provided its openness is preserved and there is no conflict with the purposes of including land within it. Barns A and B are of permanent and substantial construction. It remains to be determined whether their re-use for motor vehicle repairs and motor vehicle spraying, the elements of the mixed use carried out within them, preserves the openness of the GB or conflicts with the purposes of including land within it.

The same determination should be made in respect of the element of the mixed use comprising the storage of vehicles.

The effect on the openness and purposes of including land in the GB

17. Paragraph 142 of the Framework confirms that the fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of GBs are their openness and their permanence.
18. Motor vehicle repairs and motor vehicle spraying are carried out within Barns A and B. Incidental parking of vehicles occurs near both buildings and there is some external open storage of associated materials and waste outside Barn B, such matters often being commonplace with small-scale business development. There is nothing to suggest that policies of the development plan or the Framework seek to prevent businesses with external parking and storage requirements of this nature from locating within the GB. Indeed, it is difficult to image any business that did not require some external parking and storage, particularly waste. These are matters that could be regulated by appropriate planning conditions, should permission be granted.
19. Parts removed from motor vehicles being repaired or sprayed are stored in containers located to the immediate south of Barn B. The containers are discretely grouped and barely apparent from outside the site. The only such view I gained was by peering through a gap in the boundary fence while stood at the end of the garden of the adjacent dwelling, Maplescombe Oast. Accordingly, their contribution to the effect of the repair and storage uses on the openness of the GB in visual terms is minimised.
20. The very presence of the containers contributes to the mixed use having a greater effect on the openness of the GB in spatial terms. However, the siting of storage containers is not unusual for small-scale business development. Viewed overall, and subject to appropriate control over the containers, and the extent and siting of associated external storage and parking, the re-use of Barns A and B and associated land would have no discernible greater impact on the openness of the GB than the previous agricultural use.
21. The motor vehicle repairs and spraying and their associated external parking and storage have no effect in terms of the sprawl of large built-up areas or the merging of neighbouring towns, or the setting of any historic town. Provided they are centred on the re-use of buildings, they can safeguard against encroachment into the countryside. While motor vehicle repair and spraying businesses might contribute to urban regeneration if they were located elsewhere, no evidence of derelict or other urban land in need of recycling has been presented. Accordingly, the use for repair and spraying of motor vehicles does not conflict with the purposes of including land within the GB.
22. The storage of vehicles in the former slurry pit is a significant activity within the context of the complex of former agricultural buildings within which the pit is set. However, no views of the storage from outside the complex have been identified. Nevertheless, the storage occupies a distinct area not associated with any building and therefore it is a form of encroachment that has a materially greater impact on openness, in spatial terms, than the previous use.

The effect on character and appearance, including the NL

23. It is common grounds that the change of use does not constitute major development for the purposes of paragraphs 182 and 183 of the Framework. Paragraph 182 requires great weight to be given to conserving and enhancing landscape and scenic beauty in NLs, which have the highest status of protection in relation to these issues. Policy LO8 of the of the Sevenoaks Local Development Framework Core Strategy (the CS) phrases this responsibility to conserve and enhance in terms of the distinctive character of the NL. Policy EN5 of the Sevenoaks Allocations and Development Management Plan (the ADMP) requires a judgement to be made in terms of form, scale, materials and design, having regard to the relevant NL management plan.
24. The NL management plan defines the special components, characteristics and qualities of the NL, while the Sevenoaks Landscape Character Assessment 2017 (the LCA) provides a more detailed description for the area. The LCA identifies the character of the Eynsford and Horton Kirby Downs, within which the appeal site lies, as including undulating chalk landscape with dry valleys and isolated farmsteads and hamlets connected by narrow winding lanes.
25. The above characteristics are all exhibited in the vicinity of the appeal site, which lies within a group of buildings centred on Maplescombe Farm and associated historic development, including a former oast house. Sporadic residential development is found opposite and in small groups in either direction along the lane. Overall, the built form exhibits a linear character, following the lane as it runs through a steep sided dry valley. The topography confers an isolated and tranquil character to the area, notwithstanding the proximity of West Kingsdown village, Brands Hatch, the A20 and the M20.
26. The re-use of Barns A and B for motor vehicle repairs and motor vehicle spraying and the adjacent external parking and storage appear unobtrusive in their setting. The key characteristic of this part of the West Kent Downs Character Area of the NL, rolling sweeps of downland, would be unaffected. Those uses would, subject to appropriate control over the siting and extent of parking and external storage, retain the agricultural character of the landscape and avoid urbanisation and loss of its distinctiveness, including its tranquillity. They would thus conserve the character of the NL.
27. The vehicle storage takes place in a low-lying area flanked by large agricultural buildings, and it is therefore not readily perceived within the landscape, such that the character of the NL is also conserved.
28. Accordingly, the change of use avoids conflict with policy LO8 of the CS and policy EN5 of the ADMP.

The effect on the designated heritage asset

29. The site is within a complex of buildings associated with Maplescombe Farm House, a grade II listed building, and forming part of its setting. It is necessary to have special regard to the desirability of preserving the setting of the building, among other things, and it must be determined whether there has been any harm to the significance of the designated heritage asset.
30. The significance of the Farm House is derived from its relationship with the historic farm buildings surrounding it and the surrounding landscape, which make a positive contribution to its setting. These contributing factors enable

the building's historic significance as the centrepiece of an isolated farmstead to be appreciated.

31. The access to Maplescombe Lane is the closest part of the appeal site to the heritage asset. The parts in active use are further away, with Barns A and B standing approximately 100 m from the Farm House. By reason of this separation and intervening buildings, there is no perceptible visual connection between the appeal site and the heritage asset. The site's contribution to the heritage asset's setting is therefore in terms of the functional relationship between buildings in a farmstead, which has not been eroded by the change of use. The effect on the contribution made by the setting is therefore neutral and the change of use has not resulted in harm to the significance of the heritage asset, and its setting is protected. The change of use therefore accords with policy SP1 of the CS and policy EN4 of the ADMP.

The effect on living conditions

32. No evidence has been presented of any effect of the storage of vehicles on the living conditions of any nearby occupier. Barn B abuts the rear garden of the adjacent dwelling, Maplescombe Oast and Barn A is nearby. Activity in and around these buildings therefore has the potential to affect the living conditions of occupiers of the dwelling. Reference was made to noise and fumes in representations concerning an application for a certificate of lawful use or development for motor vehicle repair and spraying made in 2020¹ and is noted, although not expanded upon, in the evidence before me. The Council advised in the Hearing that complaints had been made to its enforcement team in 2017 but no details were provided, and it could not advise whether its environmental health service had received any complaints.
33. During the site visit, the extraction unit in Barn A was put into use with the roller shutter door open. I was unable to hear the extraction unit from the nearest part of the garden of Maplescombe Oast.
34. While vehicle repairs and spraying can give rise to unacceptable disturbance from noise and fumes, evidence of such effects arising from the appeal proposal is limited. Furthermore, suggested conditions agreed by the parties include restrictions on working outside the buildings and on the hours of working, and the submission, approval and implementation of noise and odour management plans. The repair and spraying of motor vehicles could, if permitted, therefore safeguard the amenities of occupiers of adjacent properties, as required by policy EN2 of the ADMP.

Whether very special circumstances justify the development

35. I have found that the elements of the mixed involving the re-use of Barns A and B, motor vehicle repairs and motor vehicle spraying, are not inappropriate development within the GB. They do not, of themselves, need to be justified by very special circumstances. The mixed use alleged in the notice is, however, inappropriate development within the GB because it includes the open storage of vehicles. No very special circumstances have been advanced in respect of that element of the mixed use, so the harm by reason of inappropriateness is not clearly outweighed.

¹ 20/00737/LDCEX, refused 28 May 2021.

Conclusion on ground (a)

36. For the reasons given, the element of the mixed use comprising the re-use of Barns A and B for motor vehicle repairs and motor vehicle spraying is not inappropriate development in the GB. Subject to detailed controls over the use of external areas that could be secured by planning conditions, it can be of a high quality. These elements of the mixed use would therefore accord with policies LO1, LO8 and SP1 of the CS and policies GB7, EN4 and EN5 of the ADMP and with the development plan as a whole.
37. The open storage of vehicles is, however, inappropriate development within the GB and is contrary to policies LO1 and LO8 of the CS for that reason. It is therefore unacceptable.
38. On that basis, it would be appropriate to exercise the authority granted by section 177(1) of the Act and grant planning permission for the motor vehicle repairs and motor vehicle spraying stated in the notice and to refuse permission for the storage of vehicles stated in the notice.
39. The appeals on grounds (f) and (g) therefore only fall to be considered in respect of the storage of vehicles.

Conditions

40. Condition 1 is necessary to restrict the permission to be granted to those elements of the mixed use that do not constitute unacceptable inappropriate development in the GB.
41. Several of the conditions included in the statement of common ground require redrafting to include sanctions appropriate to development that has already been carried out.
42. The first of those conditions would prevent additional containers being placed on the land. However, this would be more effectively addressed through the submission, approval and implementation of a plan for storage and parking associated with the uses to be permitted. Such a plan should specify the number of containers and their siting, along with any necessary measures for other external storage. Condition 2 is necessary for these reasons.
43. Conditions 3 and 4 are necessary to restrict motor vehicle spraying to within the buildings and to limit hours of working to safeguard the living conditions of nearby occupiers. I shall vary condition 3 to also restrict motor vehicle repairs to within the buildings for the same reason. Condition 3 is also necessary to ensure that repair and spraying activities do not take place away from Barns A and B, where they would fail to conserve the character of the NL.
44. Conditions 5 and 6 are necessary to ensure that schemes for the assessment and management of noise and odours associated with the permitted uses are approved and implemented to safeguard the living conditions of nearby residents.
45. Condition 7 is necessary to ensure that only external lighting that safeguards the character and appearance of the area and the living conditions of nearby occupiers is installed. I have amended the condition from that recommended to ensure that it also addresses the requirements of policy EN6 of the ADMP in respect of the night sky and wildlife.

46. Condition 8 is necessary to ensure that the buildings are not extended or altered in connection with their use as permitted without an express grant of planning permission. This would allow consideration of the effect of any extension or alteration on the openness of the GB, the character of the NL and the living conditions of nearby occupiers.

The appeal on ground (f)

47. No lesser steps that would remedy the breach of planning control in respect of the storage of vehicles have been identified. Accordingly, requirements a) and c), to cease the storage of vehicles and remove all cars in storage from the land, are not excessive.

48. The appeal on ground (f) therefore fails.

The appeal on ground (g)

49. The appellant has not made any case that the period of 6 months falls short of what should reasonably be allowed to cease the storage of vehicles and remove all cars in storage.

50. The appeal on ground (g) therefore fails.

Conclusion

51. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the change of use to motor vehicle repairs and motor vehicle spraying in Barns A and B. Otherwise, I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the open storage of vehicles. The requirements of the notice relating to motor vehicle repairs and motor vehicle spraying will not be deleted, so as to avoid any grant of unconditional planning permission being made through section 173(11) of the Act. However, by virtue of section 180 of the Act the requirements will cease to have effect so far as inconsistent with the planning permission which I will grant.

Formal Decision

52. It is directed that the enforcement notice is corrected in section 3 by the deletion of "(88)" and the substitution of "(B8)".

53. It is further directed that the enforcement notice is varied in section 5 by:

- The deletion of "(88)" and the substitution of "(B8)" in requirement a).
- The deletion of the words "and associated buildings" in requirement b).
- The deletion of the words "and associated buildings" in requirement c).
- The deletion of the words "and associated buildings" in requirement d).
- The deletion of requirement e).

54. Subject to the correction and variations above the appeal is allowed insofar as it relates to the specified part of the development being permitted. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for motor vehicle repairs and motor vehicle spraying at part of land and associated buildings at Maplescombe Farm, Maplescombe

Lane, Farningham, Kent DA4 OJY and subject to the conditions set out in the attached schedule.

55. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the specified part of the development being refused. Planning permission is refused in respect of the storage of vehicles at part of land and associated buildings at Maplescombe Farm, Maplescombe Lane, Farningham, Kent DA4 OJY on the application deemed to have been made under section 177(5) of the Act.

Mark Harbottle BSc MRTP

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Garvey MTRPI
David Bedford MRTPI

DHA Planning Limited
DHA Planning Limited

FOR THE LOCAL PLANNING AUTHORITY:

Hayley Nixon
Samantha Simmons
Katie Miller

Senior Planning Officer, Sevenoaks District Council
Senior Planning Officer, Sevenoaks District Council
Planning Manager, Kent Downs AONB Unit

INTERESTED PARTIES:

Elizabeth Bourne
Wendy Tovey

Local resident
Local resident

Schedule of Conditions

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (or any order revoking, re-enacting, or modifying that Order), the permission hereby granted is for the repair of motor vehicles and spraying of motor vehicles and for no other purpose.
- 2) Unless within 3 months of the date of this decision a scheme for all storage of goods and waste outside the buildings, including the number and siting of any storage containers, and vehicle parking associated with the uses hereby permitted is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site for the repair of motor vehicles and spraying of motor vehicles shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site for the repair of motor vehicles and spraying of motor vehicles shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3) No motor vehicle shall be repaired and no motor vehicle shall be sprayed outside of the buildings (Barn A and B).
- 4) The hours of operation for the approved motor vehicle repairs and motor vehicle spraying uses shall be 8am to 6pm Monday to Saturday. No works or activities in association with the approved uses shall occur on Sundays and Public Holidays.
- 5) The motor vehicle repairs and motor vehicle spraying hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for noise assessment and noise management (the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6) The motor vehicle repairs and motor vehicle spraying hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 3 months of the date of this decision a scheme for odour assessment and odour management (the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7) Within 3 months of the date of this decision, details of any external lighting to be installed, including details of how it will minimise impact on the night sky and avoid or adequately mitigate any potential impacts on wildlife, shall be submitted to and approved in writing by the local planning authority. Only the approved details shall be installed.

8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no extensions or external alterations shall be carried out to the buildings (Barns A and B) for the purposes of the uses hereby permitted.