



Appeal Decision

Hearing held on 4 July 2024

Site visit made on 4 July 2024

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/U1430/W/24/3340740

Oak Bank Farm, Farthing Lane, Ashburnham, Battle TN33 9PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Cornelis van der Meer against the decision of Rother District Council.
 - The application Ref is RR/2023/668/P.
 - The development proposed is demolition of existing lawful dwelling and construction of permanent agricultural workers dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above has been largely taken from the original planning application form, albeit a reference to the proposed development being 'part retrospective' has been removed as this is not an act of development.
3. The permanent agricultural workers dwelling subject of this appeal has already been constructed and brought into use on the site, but at the time of my site visit the proposed demolition of the existing lawful dwelling had not been undertaken.
4. The appellant submitted new arboricultural evidence at the outset of the appeal. This evidence has not resulted in any material change to the appeal proposal, while it responds to one of the Council's reasons for refusal. The Council, or any interested parties, have had sufficient opportunity to consider and respond to the evidence, including through discussions at the hearing. Therefore, having regard to case law¹, no party has been prejudiced by my acceptance of the arboricultural evidence.
5. At the hearing, I was provided a copy of a site plan in relation to an outstanding application the Council is considering (ref: RR/2024/430/P). The application is for the relocation of the permanent agricultural worker's dwelling subject of this appeal and the demolition of the existing lawful dwelling at the site.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37] and Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

6. Although not resulting from one of the Council's reasons for refusal, I have dealt with the effect of the proposal on protected species as a main issue in this appeal. This is due to the submitted evidence indicating that the proposal has the potential to impact upon Great Crested Newts. Main parties were given advance warning of this issue and appropriate opportunity to discuss it at the hearing.
7. The reasons for refusal on the Council's decision notice include references to a previous version of the National Planning Policy Framework (the Framework). Both main parties have though referred to the updated Framework throughout the appeal process. While in respect of the matters of interest in this appeal, there have been no fundamental changes to national policy since the determination of the original application.
8. In November 2023, Areas of Outstanding Natural Beauty (AONBs) were renamed 'National Landscapes', and the High Weald AONB within which the appeal site is located became known as the High Weald National Landscape. I have therefore referred to the National Landscapes and the High Weald National Landscape (the HWNL) in my decision, except where legislation or policy documents continue to refer to AONBs.

Background and Main Issues

9. The appeal site is located within the HWNL, in a rural location approximately 1.8km to the northwest of Ashburnham. It forms part of a large, well established, dairy farm.
10. Main parties agree that there is an established functional need for a dwelling on the farm to support a full-time worker and that the farm business is financially sound with a clear prospect of remaining so. From the evidence before me, I have no reason to reach an alternative view. However, the Council considers that the identified functional need can be fulfilled by an existing lawful dwelling on the site 'Oakwood'².
11. The appellant has previously sought planning permission (ref: RR/2017/1522/P) for a temporary agricultural worker's dwelling of a similar design and location as the permanent dwelling that forms part of this current appeal. That application was refused by the Council, on the grounds that there was already sufficient accommodation on the farm to meet the identified need to accommodate a rural worker and that the proposed temporary dwelling would harm the character and appearance of the HWNL. That decision was upheld at appeal (ref: APP/U1430/W/18/3204034), whereby the Inspector found that the proposal would cause harm to the landscape character and scenic beauty of the National Landscape.
12. The Inspector in the above appeal, however, determined that the functional need for a dwelling to accommodate a rural worker could not be met by existing accommodation at the site. At the time of the Inspector's decision, the Oakwood property was not in the appellant's possession. The Inspector therefore deemed it not to offer suitable alternative accommodation.
13. The appellant, without the benefit of planning permission, has subsequently built a dwelling (herein referred to as 'the appeal dwelling') in a similar location to the temporary dwelling proposed under the above referenced appeal.

² Lawful use established through Lawful Development Certificates RR/2006/1665/O and RR/2012/873/O.

Additionally, since the determination of the previous appeal the appellant has also repossessed Oakwood. The current appeal scheme therefore differs from the previous proposal at the site in that it seeks permission for a permanent dwelling, but it also seeks to demolish the existing lawful dwelling of Oakwood.

14. In light of the above, and the Council's reasons for refusal, the main issues are:

- The effect of the appeal scheme on the landscape character and scenic beauty of the High Weald National Landscape;
- Whether the functional need for an agricultural worker's dwelling at the site can be fulfilled by the existing residential property of Oakwood; and
- The effect of the proposal on protected species, namely Great Crested Newts.

Reasons

High Weald National Landscape

15. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty within AONBs, which have the highest status of protection in relation to these issues. Additionally, Section 85 of the Countryside and Rights of Way Act 2000 (as amended)³ requires all relevant authorities to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty when performing their functions.
16. The High Weald AONB Management Plan 2019 – 2024 (the Management Plan) explains that the High Weald is a largely intact, distinct, Medieval landscape and that its outstanding natural beauty is in part derived from its essentially rural and human scale. Defining components that have made the High Weald recognisably distinct include its deeply incised and ridged geology, dispersed historic settlements including isolated farmsteads, abundance of woodland and small, irregular productive fields bounded by hedgerows and trees.
17. Meanwhile, the East Sussex County Landscape Assessment (2016) categorises the appeal site as falling within the South Slopes of the High Weald Landscape Character Area (LCA). Key landscape characteristics of this area include an intricate small-scale landscape with strong pattern of hedgerow; the area being deeply dissected by numerous north-south ridges, valleys and ghylls; frequent scattered small woodlands and shaws; scattered and often isolated farmsteads; and a sense of tranquillity and remoteness away from the main settlements and road.
18. The appeal dwelling sits alone above a track that runs between Oak Bank Farmhouse and Lattenden's Farm. It is situated approximately mid-way between Oak Bank Farmhouse and a cluster of agricultural buildings that comprise the 'Farm Centre', which are accessed along the same track to the north. A band of mature trees runs alongside much of the farm track, several of which are adjacent to the appeal dwelling, with further mature trees positioned beyond the dwelling on higher ground. The surrounding topography is undulating with open fields below the site falling away in a valley towards a

³ As amended by the Levelling Up and Regeneration Act 2023

wooded ghyll, whilst the land rises behind the appeal dwelling, such that it sits below the ridgeline of the hill.

19. The appeal site and its surroundings reflect many of the above key characteristics highlighted within the Management Plan and LCA. The site therefore contributes positively to the distinctive rural quality of the countryside in this area and to the landscape and scenic beauty of the HWNL.
20. The appeal dwelling has introduced domestic clutter and activity in a largely open and sensitive location that adjoins high-quality countryside. It results in an urbanising feature, in an isolated position, that erodes the rural character of the area.
21. Public views of the appeal dwelling are primarily from distance along a public right of way (PROW) that crosses the appellant's landholding in a broadly east-west direction from Bodle Street Green. Given the surrounding topography and vegetation the appeal dwelling is not visible from sections of the PROW. Nevertheless, the appeal dwelling remains visible along a significant extent of the PROW to the east, across the valley. Despite the distances involved and intervening vegetation, as well as the scale and muted natural tones of the appeal dwelling, the development remains conspicuous from these distant views. The exposed position of the appeal dwelling, separate from nearby built form, results in it having a rather stark presence where visible from the PROW to the east.
22. The appeal dwelling can also be seen in closer proximity from parts of the PROW (to the north and north-west) after it cuts through the neighbouring Lattenden's Farmhouse land and before ascending the hill to the north-west (near to viewpoint V10 on the appellant's viewpoint analysis). Although from these parts of the PROW views of the appeal site remain partial and quite distant, the appeal dwelling is again viewed as an isolated and urbanising form of development, distinctly separated from existing built form.
23. Existing landscaping at the site could be reinforced through a relevant planning condition to further mitigate the visual impacts of the development. However, landscaping should not be relied upon to essentially screen unacceptable development, particularly as there can be no certainty that landscaping would be successful or retained in perpetuity.
24. Furthermore, whilst vegetation may be capable of somewhat alleviating the visual harm of the proposal, it remains that the development, would still adversely affect the landscape character of the site through its ill-fitting position, significantly set away from existing built form.
25. Given the similarity in design, scale, and siting of the appeal dwelling to the temporary dwelling considered under the prior appeal⁴, I find the previous Inspector's views in terms of the resultant landscape harm to remain accurate. Unlike that previous proposal, the current appeal scheme would not result in a net gain in dwellings at the site and it would result in some visual enhancements through removing the dilapidated Oakwood dwelling.
26. Oakwood is located nearer to the PROW that crosses the farm holding, but its low profile and position results in it being rather discrete even in close range views. It is also more well contained from wider public views than the appeal

⁴ APP/U1430/W/18/3204034

dwelling. Where views of Oakwood are available, due to the topography, these are mainly of its roof form and are seen almost directly alongside substantial, modern agricultural buildings and storage areas that form part of the nearby Farm Centre. Therefore, Oakwood visually reads as part of the existing farm complex, whereas the appeal dwelling is highly divorced from it and more obtrusive in the landscape. As such, the benefits of removing Oakwood would not effectively off-set the harm that the permanent new appeal dwelling has on the HWNL.

27. The appellant puts forward that the proposal would underpin the long-term vitality and viability of the farm enterprise, which it is suggested could also play an important role in preserving the area's rural landscape character. Be that as it may, I am not convinced that such benefits could not be captured through a more sensitively located dwelling on the holding, which would not result in such harm to the landscape character of the area.
28. Notably at the hearing, main parties highlighted that application (ref: RR/2024/430/P), had been recommended for approval by the Council subject to the completion of a legal agreement, which was in the process of being finalised. This application involves the relocation of the appeal dwelling to a position approximately 70m north of its current position. I note the appellant's arguments that the position of the appeal dwelling has advantages over that proposed within application RR/2024/430/P, particularly as it is located further from the PROW that crosses the farm holding. Still, I consider that the appeal dwelling's position, further removed from the Farm Centre's cluster of built form, is visually more exposed and harmful to the character and appearance of the area than the location set out under RR/2024/430/P.
29. The appellant has also highlighted the unsuitability of various other locations on the farm holding for a dwelling, including due to visual and operational impacts. Still, this does not overcome my above concerns with the appropriateness of the current appeal scheme.
30. Bringing the above together, I find that the appeal scheme causes harm to the landscape character and scenic beauty of the High Weald National Landscape. It therefore does not conserve and enhance the HWNL and is contrary to the expectations of Section 85(i) of the Countryside and Rights of Way Act. The appeal scheme also conflicts with Policy EN1(i) of the Rother Local Plan Core Strategy (adopted 2014) (the Core Strategy) and Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan (adopted 2019) (the DaSA Local Plan). These policies, together amongst other matters, seek to secure development that respects and contributes positively to local landscape character and conserves and enhances the landscape and scenic beauty of the AONB.
31. Likewise, the appeal scheme is also contrary to the aims of the Framework in respect of promoting development that conserves and enhances the landscape and scenic beauty of AONBs.

Whether the functional need can be fulfilled by the existing residential property of Oakwood

32. Main parties do not dispute that the appeal site lies in an isolated location within the countryside. Core Strategy Policy RA3 relates to development proposals in the countryside, with its overall purpose to protect the

- countryside's landscape and scenic beauty. Policy RA3(iii) establishes that the creation of new dwellings will be allowed in extremely limited circumstances, notably, where they support farming and other land-based industries, subject to compliance with specific criteria.
33. Whilst Policy RA3(iii) may provide more stringent tests than those outlined under paragraph 84 of the Framework, I find the policy to remain consistent with the aims of the Framework in respect of seeking to avoid the development of isolated homes in the countryside.
34. Of particular pertinence to the appeal scheme is the requirement established at Policy RA3(iii)(a)(ii), which requires demonstration that the functional need for a dwelling to support farming cannot be fulfilled by other existing accommodation in the area.
35. Although the appellant may now have vacant possession of Oakwood, it was evident from my site visit that the residential building was in a significant state of disrepair. From the evidence before me and my observations on site, the building was clearly constructed in a piecemeal manner. Indeed, the building appeared to contain elements that were rather crudely built/secured, including its foundations. I also understand that its septic tank has not been maintained to current regulations. In parts the building appeared to be failing, or near failing, particularly sections of its floor and decking. Accordingly, the existing lawful dwelling appeared to be in a somewhat precarious state.
36. Until relatively recently Oakwood had been occupied by a member of the appellant's family for a prolonged period. Still, it does not appear to be suitable for occupation in its current condition. However, I have been presented with no detailed breakdown of the extent of work that would be involved to bring the building into a safe and habitable condition, including potential costings and the likely resultant value of the property. I therefore cannot conclude that it would be infeasible or economically unviable to retain/refurbish the existing building for future occupation.
37. Oakwood sits atop, and near the edge of, a steep embankment. Anecdotal evidence suggests that the embankment is eroding. Although I have no reason to dispute this, I also have no accurate evidence of the embankment's overall stability or its rate of erosion.
38. The appellant has put forward that a substantial retaining wall and additional boundary fencing/railings would be necessary to address the safety constraints of the embankment, albeit no robust evidence has been provided to verify this. Thus, I am unable to find that the constraints of the embankment could not be overcome through suitably designed measures.
39. Two fine specimen Pedunculate Oak trees (Category A and B respectively) are located along the embankment near to Oakwood. The roots of these trees also appear to add to the structural integrity of the embankment. The appellant's arboricultural evidence indicates the quality and condition of the trees, as well as the extent of their canopies and root protection areas (RPAs). It does not though provide any detailed consideration as to how potential works to the Oakwood property would impact upon the trees.
40. Works to facilitate the future occupation of Oakwood are likely to need to take place within the RPAs of the trees. Still there are no details before me as to the

extent of the works, or the tolerance of the trees to potential development impacts. Additionally, there is no indication that the appellant has considered whether specialist methods of construction could take place within the RPAs without harm to the trees (as can be advocated under BS 5837:2012). Therefore, based on the evidence before me, it has also not been demonstrated that the re-use of Oakwood for residential purposes would result in any significant harm or loss of the adjacent Pedunculate Oak trees.

41. Given the lack of evidence of what the works to Oakwood and the embankment would entail, as well as the effect on the trees, I also cannot agree with the appellant's view that such works would cause harm to the setting of the neighbouring Lattenden's Farmhouse (Grade II listed) or result in detrimental visual impacts along the PROW.
42. The appellant also advances that the Oakwood site is unsuitable for residential use on safety grounds due to its proximity to the Farm Centre, which is an integral working part of the farm and a hub of operational activities. The safety concerns relate to conflicts between occupants and visitors to Oakwood and the operations of the farm, including the frequent movement of large agricultural machinery and livestock near to the residential property, its access and parking area.
43. In support of the appellant's arguments, I have been provided with extracts from the farm's Health and Safety Statement of General Policy, Health and Safety Action Plan, and an associated Risk Assessment for the farm. Additional, evidence of the dangers of farm working and particularly raising children on farms has also been provided⁵. It was evident at the hearing that the appellant and his family members are experienced farmers and highly diligent and passionate advocates for promoting safety on the farm.
44. Nevertheless, until relatively recently Oakwood had been occupied for many years as a residential dwelling. Additionally, the potential occupiers of the dwelling would be working/managing the farm and therefore have a thorough understanding of its operations and safety procedures, thereby reducing the levels of risk. Occupiers would also likely be extra vigilant of the safety of any young family members being raised at the site. Although it may not be entirely desirable, I also consider that it is not uncommon for children to be raised in dwellings located within a working farm setting.
45. Visitors to the Oakwood property (who may not work at the farm) would likely be visiting farmworkers living at the site, I would therefore expect there to be suitable arrangements that could be made so that conflicts are managed. For example, advanced notification of visits and meeting of visitors on arrival. Whilst not all visitor arrangements may be capable of being scheduled in such manner, it is evident that there is currently a duty of care for all members of public/visitors to the site and that a significant level of risk management is already being applied. Furthermore, the neighbouring property of Lattenden's Farmhouse already has a right of access along the relevant track running beside the Farm Centre and so residents and visitors to that neighbouring dwelling will already navigate through the operational part of the farm.

⁵ Article entitled 'Agriculture is no safer than in the 1980s' written by Peter Knight, managing director of Burgate Farms Ltd, in conjunction with the National Farmers Union, published in 'South East Farmer, June 2024', as well as anecdotal evidence.

46. I have taken on board the various action points/measures outlined within the appellant's health and safety documents. However, these documents do not preclude a residential dwelling from being located on the Oakwood site or accessed from the existing concrete track that runs alongside the Farm Centre. Instead, the documents emphasise the need to manage and reduce the risks as far as practically possible and outline various measures to aid this.
47. The appeal dwelling does appear to occupy a safer location compared to the Oakwood property, due to its position farther away from the main Farm Centre. I also recognise that there are legitimate safety concerns associated with the residential use of the Oakwood site. Nonetheless, it seems that the safety risks in relation to the Oakwood property could be appropriately managed, while I am mindful that it has previously been used for residential purposes for a prolonged period.
48. Main parties also dispute the suitability of the Oakwood site to host a replacement dwelling. However, given my above findings in relation to whether Oakwood could be refurbished and brought back into use, it has not been necessary to consider this further.
49. Policy RA3(iii)(c) also provides support for the one-to-one replacement of an existing dwelling within the countryside, but this is on the basis that the replacement dwelling has a similar landscape impact. Given my findings on the first main issue, the appeal scheme would not comply with this criterion of the policy.
50. Based on the submitted evidence, the ability for the functional need for an agricultural worker's dwelling at the site to be fulfilled by the existing residential property of Oakwood has not been suitably discounted. The proposal therefore conflicts with Core Strategy Policy RA3(iii), as well as paragraph 84 of the Framework.

Great Crested Newts

51. The appeal site lies within an 'amber impact zone', for Great Crested Newts (GCN), as per the modelled district license impact map, which indicates that there is suitable habitat to support GCN in the area surrounding the application site. Additionally, there are ponds located in relatively close proximity to the existing dwelling of Oakwood, which together with vegetation alongside the building, can provide suitable habitat and potential resting places for GCN. This is a view that was confirmed by the East Sussex Newt Officer as part of her consultation response to the original planning application.
52. The appeal dwelling has already been installed at the site, but the proposed development also includes demolition of the existing Oakwood building. As such, there remains potential for the proposed development to have an effect on a protected species' habitat.
53. In exercising my functions in determining this appeal, I have a statutory duty to have regard to the purpose of conserving biodiversity. Furthermore, GCN are a protected species and designated as a species of principal importance for conserving biodiversity under Section 41 of the NERC Act.
54. Paragraph 99 of Circular 06/2005 states that it is essential that the presence of 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. It therefore advises that surveys should be completed and any necessary measures to protect protected species should be in place, through conditions and/or planning obligations, before the permission is granted. Additionally, the Circular states that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances.

55. Circular 06/2005 further indicates that, due to delays and costs involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
56. No ecological surveys have been submitted alongside the appeal proposal. In the absence of any survey work, the presence and size of any GCN populations, the extent to which they may use the site, and the extent of any impacts of the development are unclear.
57. At the hearing the Council highlighted that the Newt Officer's consultation responses to other planning applications often set out a requirement for survey work to be undertaken prior to the determination of the application. In this case however such surveys were not stated as being required. Instead, main parties suggested at the hearing that the Newt Officer has been explicit that a condition requiring a precautionary working method statement (PWMS) would provide a sufficient level of mitigation in this instance. Main parties also agreed that such a condition was suitable, whilst they emphasised that the Newt Officer referred to Circular 06/2005 in her consultation response, thereby signifying that the requirements of the Circular had been considered.
58. The Newt Officer was not present at the hearing to question. From my reading of her consultation response to the application though, it appears that she felt that there was a reasonable likelihood of GCN being present and affected by the development, but that the need to undertake a survey was deemed to be unreasonable on financial grounds. However, the cost implications of such surveys are not a suitable or exceptional reason as to why they should not be conducted prior to determination of the application/appeal, nor does the consultation response reassure me that a survey is unnecessary in this instance.
59. Given the vegetated condition of the site near Oakwood, the presence of nearby ponds, and the appeal site's location within the 'amber impact zone for GCN, I consider there is a need for relevant surveys to be undertaken. In the absence of the results of such survey work, I am unable to rule out that the appeal site provides a suitable habitat that supports GCN. Nor can I be confident as to how any GCN may be affected or what mitigation is required.
60. Consequently, I cannot find that a condition requiring the implementation of a PWMS (to be attached to any grant of permission) is reasonable or necessary, or that the measures to be included within a PWMS would adequately mitigate the impacts upon GCN.
61. For the above reasons, I am not persuaded that the proposal would avoid harm to protected species, namely Great Crested Newts. Accordingly, I find the proposal to conflict with Policy DEN4 of the DaSA Local Plan, which provides support for the conservation of biodiversity, including seeking for development

proposals to conserve or enhance protected species, both within and outside designated sites. Similarly, it would also not accord with the aims of the Framework in respect of protecting and enhancing biodiversity.

Other Matters

62. The appeal scheme lies within the setting of Lattenden's Farmhouse (Grade II Listed). The significance of the listed building largely lies in its age, historic role on the farmstead and its architectural value that articulates the agricultural heritage of the area. The listed building also derives significance from its pastoral landscape setting, which reflects its origins as a farmhouse and provides an important positive contribution to how the asset is viewed and appreciated. The immediate setting of this heritage asset has undergone some change, notably through the nearby introduction of substantial, modern, agricultural buildings, yet these still provide clear agricultural associations.
63. Despite the appeal scheme causing harm to the landscape character of the area, I am satisfied that it would not cause harm to the setting of the listed building or its significance. This is due to the overall scale and design of the appeal dwelling, the separation distances involved, and the nature of intervening topography and large-scale development, meaning that the proposed dwelling and Lattenden's Farmhouse are not closely viewed or experienced with one another. Although Oakwood is located nearer to the heritage asset, it still occupies a discrete and rather well contained position separate from the listed building and again is not closely viewed or experienced alongside the heritage asset. As such, I do not find the proposed removal of Oakwood would enhance the setting or significance of the listed building.
64. I therefore find the proposed development would have a neutral impact on the setting and significance of Lattenden's Farmhouse, thereby preserving the special interest of the listed building.
65. I have no doubt that the appellant's family play an important role in the local farming and wider community and that there is a genuine need for suitable accommodation for the appellant's son to be provided at the farm. The appeal scheme may also provide socio-economic benefits, notably through underpinning the long-term vitality and viability of the farm enterprise, which as previously indicated could also make a positive contribution to the landscape of the area. However, based on the evidence before me, it seems that such benefits may also be achieved from a dwelling being sited in a more sensitive and appropriate location on the holding.
66. Support (or a lack of objections) from local residents, is not a suitable reason to allow unacceptable development. Meanwhile, compliance with other relevant development plan policies is to be expected of new development and therefore does not weigh in favour of the appeal scheme.

Conclusion

67. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Lewis Condé
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr. Dale Mayhew – Planning Agent

Mrs. Gillian Van der Meer – Appellant's Wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr. Michael Vladeanu – Planning Officer

Mrs. Sarah Shepherd – Senior Planning Officer

Ms. Rossella De Tommaso – Planning Officer

PLANS

1. Site Plans, Drawing No. EA0098/PL2 B (associated with planning application Ref: 2024/430/P)