



Appeal Decision

Site visit made on 6 February 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/V2255/W/24/3349633

Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN

- 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 Greg Wallis against the decision of Swale Borough Council.
 - The application Ref is 23/505204/FULL.
 - The development proposed is Change of use of agricultural land and conversion of a former poultry shed to form a single residential dwelling, to include associated external alterations, landscape, parking and ecological enhancements.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural land and conversion of a former poultry shed to form a single residential dwelling, to include associated external alterations, landscape, parking and ecological enhancements at Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN in accordance with the terms of the application Ref: 23/505204/FULL subject to the conditions set out in the schedule below.

Application for costs

2. An application for costs was submitted by Mr Greg Wallis against Swale Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. In the banner heading above I have used the description of development taken from the Council's decision notice and the appeal form, as opposed to the application form, as it more accurately describes that for which permission is sought.
4. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.
5. Following the submission of the appellant's Statement of Case, the Council advise that the appeal site does not lie within the 6km buffer zone that surrounds the Thames and Medway Estuary Special Protection Areas. As a result, they no longer wish to defend the reason for refusal in relation to this matter. I therefore do not address this matter in the reasoning below.
6. An Updated Marketing Analysis Report, produced by George Webb Finn (July 2024) was submitted with the appeal. It is important that what is considered by the

Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

7. In this case, the updated marketing information provides additional detail in relation to the Council's reason for refusal, rather than any amendments to the proposal. The Council and interested parties had the opportunity to comment on this evidence as part of the appeal process. Prejudice would not arise in taking it into account and so that is what I have done.

Main Issues

8. The main issues in this appeal are:
 - The effect of the proposal on employment provision and community facilities within the area;
 - The effect of the proposal on the character and appearance of the landscape character of the Perrywood Hills and Dry Valleys character area and the Kent Downs National Landscape (KDNL);
 - Whether or not the site would be suitable for a residential development given its location outside a built-up area; and
 - The effect of the proposal on the best and most versatile agricultural land.

Reasons

Employment provision and community facilities

9. Policy DM3 of Bearing Fruits 2031: The Swale Borough Local Plan (2017) (LP) states that planning permission will not be permitted where it would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The policy's supporting text states that evidence of demand should include the results of efforts made to market the building as available for employment use, normally with a planning permission.
10. The submitted evidence includes a Viability Appraisal Report by Lambert and Foster, and the author is a RICS Registered Valuer and Fellow of the Central Association of Agricultural Valuers. The report outlines that due to its low eaves and the limited height and width of the door openings the appeal building is not suitable for the storage of agricultural machinery due to the size of modern tractors and equipment. Furthermore, the building has been vacant for thirty years, is in a poor state of repair and requires removal of asbestos prior to any future use. At least one insurer has confirmed that due to the building's condition, they would not provide a quote to insure it. It therefore has very limited use for agricultural purposes.
11. The report also considers the likely demand and viability of different uses, including office, storage and light industrial use. As a result of the significant expenditure required to repair and convert the building to each of the uses, and based on the estimated market rental values, the report concludes that these alternative uses are not financially viable. I acknowledge the comments from the Council and interested parties, including in relation to the identification of issues such as the asbestos through surveys prior to the purchase of the property.

However, there is no substantive evidence before me to dispute the financial viability conclusions.

12. Furthermore, the appeal site is accessed via narrow country lanes, with no footways or cycle paths and is some distance from the nearest settlement. Its relatively isolated location and poor accessibility would likely result in future occupiers driving to the site. At present, there is very limited car parking provided particularly given the number of workers who could be associated with the alternative uses. Equally, an alternative use for community purposes would be likely to require a significant quantum of car parking, which is not available on site. For this reason, I share the concerns that the unit is likely to be unviable for alternative rural employment and community uses.
13. The appellant's updated Marketing Analysis outlines the marketing campaign undertaken during the period from 1 April 2023 to 9 July 2024 during which time there was a single viewing and no offers made for renting the property. The evidence includes a photograph of a 'to let' board installed at the site. A property brochure was also prepared and the property was advertised online and its particulars circulated to prospective tenants.
14. An initial guide price of £12,000 (£5.14 per square foot) per annum was advertised for four months. The price was subsequently reduced to £9,000 (£3.86 per square foot) per annum on 10 August 2023 and marketed for a further twelve months. The Marketing Analysis includes comparative evidence of agreed lets and rent sought for properties on the local market. Whilst the property is in poor condition, the evidence indicates that the guide price was at the lower end of the local market value. Consequently, the evidence indicates that the property was marketed at a price that reflected its condition. Although the property was not marketed as a community use, the submitted evidence indicates the presence of two alternative community halls within close proximity, and I have found that the property is unlikely to be viable for such a use.
15. I note that the supporting text to Policy DM3 outlines a preference for the property to have a relevant planning permission for any potential employment use it is marketed for. However, this is not an absolute requirement of the policy. The submitted evidence indicates that in the case of the recent Frognall Barn planning application (Ref:21/501737/FULL), which was assessed against Policy DM 3, planning permission was not in place for alternative uses prior to the marketing exercise. This is not disputed by the Council.
16. The property was not marketed for tourism purposes. However, my attention has not been drawn to any words within Policy DM3 which would require this. Whilst I note the evidence within the Swale Employment Land Review 2023 Update, the submitted marketing evidence demonstrates that there is no realistic current demand for employment floorspace on this site.
17. Therefore, I am satisfied based on the information submitted by the appellant from local agents that the property has been adequately marketed and it has been demonstrated that other uses for the building would not be viable. Therefore, there would be no conflict with Policy DM3 of the LP. As Policy DM14 of the LP requires that development should accord with the policies and proposals of the adopted Development Plan unless material considerations indicate otherwise, it follows that there would also be no conflict with this policy.

Character and appearance

18. The appeal site is within the KDNL and is identified within The Swale Landscape Character and Biodiversity Appraisal SPD (2011) as falling within the “Dry Valleys and Downs Landscape Types” category and the Perrywood Hills and Dry Valleys character area. The Council identify the area as having a moderately sensitive landscape which is in good condition. Mixed woodlands and mature hedgerows are identified as features of the landscape contributing to ecological interest.
19. Since the appeal site is within the KDNL, great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in paragraph 189 of the Framework.
20. I acknowledge concerns raised in respect of domestic paraphernalia associated with the residential use of the building. However, as a result of its dense front boundary hedgerow and the surrounding woodland, the site is relatively concealed in respect of longer views. Short range views from the highway into the site are only possible from directly in front of the site access. At present the appeal site predominantly consists of mown grassland. The submitted drawings indicate the planting of orchards, a wildflower meadow, the reinforcement of a site boundary with native hedgerow and additional silver birch tree planting. This could be secured with a planning condition. Whilst this planting will take a number of years to mature, I consider that the proposal would enhance the landscape and natural scenic beauty, visual qualities and essential characteristics of the KDNL, and the character and appearance of the surrounding countryside.
21. As a result, I conclude that the proposal would be acceptable in terms of the effect on the character and appearance of the area, including the KDNL. The proposal would therefore comply with Policies ST1, ST3 and DM24 of the LP insofar as they require development to conserve and enhance the special qualities and distinctive character of the KDNL and the intrinsic character, beauty and tranquillity of the countryside.

Suitable location

22. The appeal site is divorced from the nearest settlement identified in the LP and is, therefore, located in the countryside for planning purposes. The Braintree judgement advised that the word isolated in the Framework’s phrase ‘isolated homes in the countryside’ simply connotes a dwelling that is physically separate or remote from a settlement¹. There are several other dwellings in the immediate area. However, these dwellings form sporadic rural housing along this stretch of Grove Road, rather than a settlement. On the evidence that is before me, the appeal site does not fall within a rural settlement.
23. As the appeal site is located outside any settlement, is not in the vicinity of the boundary of any settlement, and is located within the open countryside it is isolated in the context of Paragraph 84 of the Framework. This states that decisions should avoid the development of isolated homes in the countryside unless any identified exceptions apply. One such exception is development re-using a redundant or disused building where enhancing its immediate setting.

¹ Braintree DC v Secretary of State for Communities and Local Government, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

24. The proposal would re-use a building which has been vacant for thirty years. As set out above, I have found that the proposal, as a result of the additional landscaping and planting, would enhance its setting.
25. The dwelling would be relatively remote from the nearest services and facilities and large urban areas, so its occupation by residents would not contribute to a sustainable pattern of development. The occupiers would be likely to rely to a large extent on use of the private car. However, national policy allows the reuse of existing buildings in the countryside for residential purposes and the proposal falls within this category. Equally, I have found that the proposal complies with Policy DM3 of the LP which permits the conversion of rural employment buildings to residential use where evidence is provided that shows that there is no demand for them to be used for employment, or if they are wholly unsuitable for any employment use.
26. Policy ST3 of the LP is clear in setting out the Swale Settlement Strategy that development will not be permitted outside the built-up boundaries unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting tranquillity and beauty of the countryside, its buildings and the vitality of rural areas. For the reasons given above, therefore, I conclude that the development would accord with this policy. Nor therefore would it conflict with the requirements of Policies ST1 and CP3 of the LP which, in order to deliver sustainable development in Swale, require that development accords with the Swale Settlement Strategy.

Agricultural land

27. The Council indicate that the appeal site would result in the loss of Grade 2 agricultural land, and this is not disputed by the appellant. In accordance with the Framework, this is considered 'best and most versatile agricultural land'.
28. Policy DM31 of the LP states that development on agricultural land will only be permitted when there is an overriding need that cannot be met within the built-up area boundaries. However, the main parties agree that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, it appears that requirements for housing supply cannot currently be met within the Council's defined built-up area boundaries. Accordingly, and bearing in mind the Framework's objective to significantly boost the supply of housing, the requirement for housing in this case is an overriding need, justifying development on agricultural land.
29. The appeal site does not form part of a wider holding, and therefore its loss would not render a remaining agricultural holding unviable. The appellant outlines that whilst the grass has been regularly mown for thirty years, the appeal site has not been farmed for a considerable amount of time. In addition, the existing barn is in a poor state of repair and has design limitations which mean that, without modifications, it is unlikely to be suitable for agricultural use.
30. Consequently, for the above reasons, in this instance I do not find that the loss of best and most versatile agricultural land would conflict with Policy DM31 of the LP, the aims of which are outlined above.

Other Matters

31. The neighbouring property, Well House, is a Grade II Listed Building (LB), located approximately 75 metres from the appeal property. From my observations on the site visit and the evidence before me, the significance of the LB is derived mostly from its age and architectural quality.
32. The statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications.
33. As detailed within the appellant's Heritage Impact Assessment, the appeal property is separated from the LB by a significant distance and a mature boundary hedge. Furthermore, the proposal would retain the existing form of the appeal building. As such, while resulting in a change on the site, given the separation and relatively limited intervisibility, the proposal would preserve the significance of the designated heritage asset. These findings are consistent with the Council's own heritage advisor.
34. A significant number of neighbours have raised other concerns in relation to the development. Interested parties state that the proposed development would harm highway safety, with concerns raised about an increase in traffic and sight lines from the site access. The appeal proposal provides a single dwelling which would result in a very limited increase in local traffic, which would not be harmful. The appeal site would have a parking area of sufficient size for the vehicles associated with the dwelling and a turning area which would enable vehicles to enter and leave the site in a forward gear.
35. Interested parties suggest that protected species may be present within the local area. The planning application included an Ecological Appraisal and I note that Kent County Council's Biodiversity Officer was consulted and raised no objection subject to the imposition of planning conditions related to ecological mitigation during construction, lighting and ecological enhancement. I have been provided with no substantive evidence which would prompt me to disagree with the Biodiversity Officer's conclusions, and I have imposed the aforementioned planning conditions.
36. As I have found that the proposal would cause no harm to character and appearance, and complies with the relevant policies related to the change of use of rural employment buildings and loss of agricultural land, it would not create a precedent for other developments that would cause harmful effects in these regards.
37. In relation to concerns about the visual effect of the conversion of the building, the proposal would retain the buildings' existing form and general appearance of a former agricultural building. The proposed shiplap weatherboarding would reflect the rural vernacular and would not harmfully erode the buildings' original character.
38. As future residential subdivision of the appeal site would require a new planning permission it would not be necessary or relevant to impose a planning condition which would restrict this.

39. Concerns in relation to construction traffic and noise have also been raised. I have sympathy for existing occupiers as development of this nature would inevitably give rise to some disruption. However, the works would be time limited and it would not be reasonable to withhold consent on this basis alone.
40. It has been suggested that there is not evidence that residential development is needed locally. However, the submitted evidence indicates that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, it appears that requirements for housing supply cannot currently be met within the Council's defined built-up area boundaries, indicating that there is significant local housing need. Interested parties suggest that previous alterations to the barn have removed much historical interest from it. However, there is no evidence before me to suggest that these alterations could not have taken place. I have determined the appeal on its own merits and based on the appearance of the site during my visit.
41. A number of other matters have been raised by interested parties and I have taken them all into account. Those related to planning include the proposal not being beneficial to the community and the impacts on local infrastructure. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects. Consequently, they do not lead me to a different overall conclusion other than that the appeal should be allowed.

Conditions

42. I have had regard to the various planning conditions that have been suggested. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
43. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty. In the interests of character and appearance I have imposed the suggested condition related to the use of external materials.
44. I have imposed the Council's suggested condition relating to sustainable construction in the interests of promoting energy efficiency and sustainable development.
45. Conditions related to mitigation measures for protected species and biodiversity management measures are necessary to enhance biodiversity. In the interest of character and appearance I have imposed a condition related to hard and soft landscaping. However, In the interests of brevity I have combined the Council's three suggested landscaping conditions into a single condition.
46. I have imposed the suggested condition related to contamination to ensure that any contaminated land is adequately dealt with. A condition to restrict construction hours is necessary to protect the living conditions of neighbouring occupiers. A condition requiring the retention of off-street car parking is necessary for highway safety.
47. Whilst the existing building was previously an army barracks used during the Second World War there is no evidence that it is of specific historic interest. Consequently, I do not consider that a condition requiring a programme of building recording would be reasonable or relevant, and I have not imposed it. However, as

the appeal site lies near the Iron Age earthwork enclosure at Perry Wood, I have imposed the Council's suggested condition related to an archaeological watching brief, to ensure that any features of archaeological interest are properly examined and recorded.

48. I have not imposed the suggested conditions requiring the restriction of water usage and the installation of an electric vehicle charger as the PPG sets out that compliance with other regulatory requirements, such as the Building Regulations, will not meet the test of necessity and may not be relevant to planning.

Conclusion

49. For the reasons above, and having regard to all other matters raised, I conclude that the proposal would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans: P06 Rev B, P07 Rev A, P08 Rev B, P09 Rev B and P10 Rev B.
- 3) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the Local Planning Authority. The works undertaken thereafter shall be in strict accordance with the details approved.
- 4) No development shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.
- 5) From two weeks prior to the commencement of any works (including site clearance), all mitigation for protected/notable species and habitats will be carried out in accordance with the details contained in section 11 of the Native Ecology Updated Ecological Appraisal (dated June 2023), unless otherwise varied by a Natural England licence following updated survey(s) for badgers. The approved strategy will be implemented from two weeks prior to the commencement of works until completion.
- 6) Within 3 months of works commencing, a detailed plan(s) (including planting schedules) showing how the development will enhance biodiversity shall be submitted to, and approved in writing by, the Local Planning Authority. This will

include a detailed landscaping plan, basic management measures to achieve the proposed habitat target conditions, native and wildlife-friendly planting, a wildlife pond, and durable bat and bird boxes aimed at species of conservation concern. The approved measures will be implemented and retained thereafter.

- 7) The development shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The landscaping works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.
- 8) The dwelling shall not be occupied until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. The dwelling shall not be occupied until the approved sustainable construction techniques have been incorporated into the development in accordance with the approved details.
- 9) The dwelling shall not be occupied until a lighting design plan for biodiversity has been submitted to, and approved in writing by, the Local Planning Authority. The plan will show the type and locations of external lighting to demonstrate that areas to be lit will not adversely impact biodiversity. All external lighting will be installed in accordance with the specifications and locations set out in the plan and will be maintained thereafter.
- 10) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 11) The area shown on the submitted plan as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.

- 12) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what materials have been removed from the site.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

END OF SCHEDULE