



Appeal Decision

Site visit made on 17 June 2025

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/H2265/W/25/3362362

Dairy Farm Common Road, Hadlow, Tonbridge TN11 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Christopher Entwistle against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/24/00821/PA was approved on 14 October 2024 and planning permission was granted subject to conditions.
 - The development permitted is described as 'Retrospective application for levelling of the site'.
 - The condition in dispute is No 2 which states that: 'within six months of this decision the applicant, or their agents or successors in title, will secure the implementation of an Archaeological Site Survey in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority'.
 - The reason given for the condition is: 'to ensure that features of archaeological interest are properly examined and recorded in accordance with NPPF and are afforded better protection through raising awareness'.
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Decision

1. The appeal is allowed and the planning permission Ref TM/24/00821/PA for development described as 'retrospective application for levelling of the site' at Dairy Farm Common Road, Hadlow, Tonbridge TN11 0JE granted on 14 October 2024 by Tonbridge and Malling Borough Council is varied by deleting condition No 2.

Background and Main Issue

2. The National Planning Policy Framework ('the Framework') outlines that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
3. Planning permission ref TM/24/00821/PA ('the Permission') was granted retrospectively and subject to conditions for levelling of the appeal site. The appeal follows the appellant's request to remove Condition 2 which relates to an archaeological site survey.
4. The main issue is whether or not Condition 2 is necessary and reasonable having regard to heritage assets of archaeological interest.

Reasons

5. The appeal site is part of an area listed on the Historic Environment Record as a post-medieval – modern brickworks which the County Archaeologist indicates was a large 19th Century or earlier brickworks, including buildings, brick drying structures a kiln and possible pugmill and other associated structures. Lakes were likely to have been the source of clay and may later have been part of the water system, and much of the land would have been used for storage or activities such as moulding of clay, shaping, drying, stacking and transporting of bricks.

6. The appellant refers to 'archaeological paperwork' indicating that there are no kilns within the area of the appeal site. However, this has not been put before me as part of the current appeal and I have no other firm information to be able to determine that the appeal site would not include or have the potential to include heritage assets with archaeological interest associated with the former brickworks.
7. Nevertheless, the County Archaeologist indicates with reference to aerial photographs that any archaeological remains look to have been below ground. Notwithstanding reference elsewhere to excavation, the Council states that it does not dispute the appellant's evidence that levelling works did not involve any digging or disruption of the ground but merely infilling to create a level surface. Interested parties also describe the works as comprising the addition of material to the site. Installation of a horse menage and fencing referred to by the County Archaeologist are not part of the Permission scheme and while there may have been alterations to existing ground levels, levelling in this way without excavation would not have resulted in the removal of any below-ground remains that may be present. Instead, these would still be in situ, and given the nature of the levelling and the information before me, it is unclear that other damage or destruction of remains that may be present below ground would be likely. Having regard to the nature of the appeal development, potential effects and from the information before me, I am not persuaded that further survey to inform the assessment of the archaeological potential of the site as sought by the disputed condition would be necessary.
8. Moreover, the appeal development has been completed. It is regrettable that the development was carried out without planning permission. However, there is no firm evidence of deliberate neglect of, or damage to, a heritage asset. Nor that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.
9. The Council's statement confirms that refusal of permission on heritage grounds would not be warranted and I have no firm reason to take a different view. Furthermore, the disputed condition would provide for a survey of the site, but this would be in its current condition. There is no provision or suggestion of any remedial action being required. Given also that no further works are to be undertaken as part of the appeal development, it seems to me that examination and recording of features that may be present in their current condition would not usefully assist in understanding or addressing potential impacts of development.
10. The County Archaeologist's comments refer to making clear to the applicant that their site is part of a 19th century brickworks. However, it cannot be assumed that there would be future unauthorised works at the site. 'Raising awareness' as stated in the reason for the condition is not in any event relevant to the development permitted and is not in my view a compelling or reasonable basis to now require archaeological survey and investigation works.
11. I acknowledge the requirements of the Framework, including that where a site includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Given all of the above however, I find that the disputed condition would not serve a useful planning purpose having regard to heritage assets of archaeological interest in this case. I conclude that the disputed condition would not be reasonable or necessary to make the appeal development acceptable. It would therefore fail to meet the tests set by the Framework and should not be imposed.

Conclusion

12. For the reasons given above, I conclude that the appeal should be allowed and the Permission should be varied by deleting Condition 2.

J Bowyer

INSPECTOR