



Appeal Decision

Site visit made on 4 July 2025

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2025

Appeal Ref: APP/U2235/W/25/3359851

Cherry Gardens, Collier Street, Tonbridge, Kent TN12 9RJ

- 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 Mark Hearn against the decision of Maidstone Borough Council.
 - The application Ref is 24/503143/FULL.
 - The development proposed is the erection of an agricultural storage barn, installation of solar roof panels and improvements to existing driveway.
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Decision

1. The appeal is dismissed

Main Issues

2. The main issues in this appeal are:
 - Whether the proposed development is proportionate to and necessary for the purposes of agriculture on land in use for an agricultural trade or business.
 - The effect of the proposed development on the character and appearance of the area, with particular regard to its location in the countryside.
 - Whether the proposed development would be at an unacceptable risk of flooding or would unacceptably increase flood risk elsewhere.

Reasons

Whether necessary for agriculture

3. Policy LPRCD5 of the Maidstone Borough Council Local Plan Review 2021-2038, Adopted March 2024 ("the MBCLPR") states that proposals for new agricultural buildings or structures on land in use for an agricultural trade or business will be permitted, subject to being proportionate and necessary for the purposes of agriculture, amongst other criteria.
4. Section 336 of the Town and Country Planning Act 1990 as amended defines "Agriculture" as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.
5. The appellant intends to establish an agricultural contracting business on the appeal land, which would involve the storage of machinery and equipment for use

on third party land. On the information before me, an agricultural contracting use would not fall within the definition of agriculture, and no substantive evidence has been advanced to the contrary. As the appellant has applied for an agricultural storage barn, which is the description of development on the planning application form, I have determined the appeal on that basis.

6. The proposed building is described as necessary for the storage of feed, hand tools and farm machinery. The planning application form describes the use of the land edged red as agricultural and the use of the land edged blue as a mixed use of agricultural and residential caravan site. The evidence before me does not demonstrate that the appeal land is a registered agricultural holding.
7. Despite some brief references to the growing of Christmas trees and the keeping of livestock and grazing, there is limited substantive evidence of any agriculture purposes being carried out on the land for the purposes of a trade or business. It is reasonable to suppose that an agricultural trade or business would be able to provide documentary evidence pertaining to its trading, such as purchases, expenditure and sales, and details of livestock kept. Although my site visit was only a snapshot in time, the appeal site appeared to be overgrown with no identifiable signs of any livestock grazing or crop growing on the land, and only a few rows of Christmas trees.
8. For these reasons, the evidence before me has not demonstrated that the land is in use for agricultural purposes as a trade or business. Therefore, I am not satisfied that the proposed building is necessary or proportionate for the purposes of agriculture on land in use for an agricultural trade or business. The area of land within the appellant's control appears to be relatively modest, and I am not satisfied on the evidence before me that several large items of machinery would be required to tend to it.
9. Indoor storage of machinery and equipment would be more secure than keeping it outdoors where it would be exposed to the weather. Incidents of thefts, including of tools, equipment and a generator have been reported. However, given that I have not found the proposed building to be necessary or proportionate for the purposes of agriculture on the land, those matters hold very limited weight in favour of the appeal proposal.
10. The appellant criticises the Council for not requesting additional information on the scale and nature of the proposal during the determination of the planning application. However, it is incumbent on parties in appeals to present their cases in full and I have necessarily determined the appeal on the evidence before me. Whether a proposed development is proportionate to and necessary for the purposes of agriculture on land so used for a trade or business is a matter of planning judgement for the decision maker based on the evidence before them. Whilst the Council could have chosen to seek the advice of an Agricultural Consultant it was under no compulsion to do so, and it reached its decision using planning judgement, supported by reasons.
11. Condition 7 of planning permission 23/503600/FUL appears to remove permitted development rights for temporary buildings and structures. This appeal is not for a temporary building or structure. Whether such temporary structures were to gain permission, for example to establish an agricultural contracting business, would be a matter for the Council in the first instance.

12. In taking all the above into account and on the evidence before me, I conclude that the appellant has failed to demonstrate that the proposed building would be necessary for and proportionate to the purposes of agriculture on land in use for an agricultural trade or business. As such, it would be contrary to the requirements of MBCLPR Policy LPRCD5, which are set out above, and MBCLPR Policy LPRSP9, insofar as it requires development proposals in the countryside to accord with other policies in the plan.

Character and appearance

13. The appeal site lies within the countryside to the northwest of the settlement and comprises of a spacious parcel of overgrown land served by a stone surfaced gated access with the road. There are currently relatively clear uninterrupted views of the appeal site from the road, particularly along the site access and through the gaps between the modestly sized deciduous roadside trees.
14. The appeal site's spacious and verdant appearance is a component part of the area's verdantly rural and spacious countryside landscape. It consists predominantly of low-lying expansive fields on both sides of the roads, often bordered by rows of trees, and where built development is absent, save for a few small buildings. Larger buildings in the area tend to be well related to the settlement with very limited intervisibility with the appeal site.
15. The appeal site and its surroundings have intrinsic character and beauty as part of the countryside, and are representative of the landscape characteristics described in the Maidstone Landscape Character Assessment 2013, which identifies the appeal site as located within the Laddingford Low Weald landscape type.
16. The appeal building is designed for storage with a simple exterior appearance that would be typical of modern storage buildings found on both farms and commercial premises. Despite being set back from the road and finished in a dark recessive colour, the proposed building would be a sizeable structure in the landscape with a relatively wide frontage.
17. Consequently, it would be clearly visible from the road both in views along the site access, and through the gaps between the frontage trees. The visibility of the proposed building when seen from the road would be expected to increase when the trees are not in leaf. The photographs in the appellant's planning statement appear to show the visibility of the appeal site when those trees are not in leaf.
18. In those views the proposed building would not be well related to any existing development on the appeal site, or in the wider area, in terms of its siting and scale. It would appear as an isolated and intrusive structure with an industrial aesthetic that would have a significantly harmful effect on the area's verdantly rural and spacious countryside. It would therefore be detrimental to the intrinsic character and beauty of the countryside.
19. There is little information before me to demonstrate that a soft landscaping scheme would form an impenetrable barrier to views of the appeal building. Even if planting was to become established, I am conscious that it can evolve over time and there is no mechanism before me that would prevent it from being thinned out or reduced in height.

20. I do not accept the premise that an agricultural storage building that is well-designed for its function cannot, as a matter of principle, be harmful to the character and appearance of the countryside. Whether a particular storage building would be harmful to the character and appearance of the countryside would be dependent upon the precise characteristics of a proposal and its site-specific context.
21. In this instance, for the reasons given above, I have found that the proposed building would be harmful to the character and appearance of the area. Therefore, the existence of similar such storage buildings elsewhere is of limited weight and relevance to my conclusions on this matter.
22. There is little information to demonstrate that the visual effects of the buildings purportedly removed from the land under Condition 7 of planning permission 23/503600/FUL, would have been comparable to the appeal proposal. As such, the previously removed buildings have limited relevance and weight to my considerations in this appeal.
23. For these reasons, I conclude that the proposed development would be significantly harmful to the character and appearance of the area, with particular regard to its location in the countryside. As such, it would be contrary to MBCLPR Policies LPRCD5, LPRSP9, LPRSP15 and LPRQD4, insofar as they require development to respond positively to the local character of the area, with particular regard to scale and massing, and avoid significant harm to the rural character and appearance of the area.

Flood risk

24. The appeal site is located within Flood Zone 3 on the Environment Agency flood zone map, which corresponds to a high probability of flooding. The Planning Practice Guidance ("the PPG"), states¹ that the National Planning Policy Framework ("the Framework") sets out strict tests to protect people and property from flooding. Where these tests are not met, new development should not be allowed. The main steps to be followed in addressing flood risk start with assessing and then avoiding flood risk.
25. In terms of flood risk avoidance, there is no substantive evidence before me to indicate that the appeal proposal has been subject to the Framework's sequential test. Framework Paragraph 170 states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Had I been minded to allow the appeal, I would have raised this matter with the main parties.
26. Nonetheless, in a hypothetical best-case scenario for the appellant, even if there were no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, this is not the end of the matter regarding flood risk. This is because Framework Paragraphs 170 and 181 require development that is necessary in areas at risk of flooding to be made safe for its lifetime without increasing flood risk elsewhere.
27. MBCLPR Policy LPRSP14(C), requires new development to include a Flood Risk Assessment where the site is located within Flood Zones 2 or 3. The PPG² sets

¹ Paragraph: 003 Reference ID: 7-003-20220825

² Paragraph: 020 Reference ID: 7-020-20220825

out the objectives of a site-specific flood risk assessment. In this instance, the submitted flood risk assessment (FRA) is not specific to the appeal development on the appeal site. Instead, it relates to an earlier planning application that included the siting of one static caravan and one touring caravan.

28. The appeal site is not far away from the development site assessed by the FRA. There are maps within the FRA that show the appeal site (including Figure 6 showing flood zones) and its use would be 'less vulnerable'. However, I cannot be satisfied that the specific recommendations and conclusions in the FRA apply to the appeal proposal before me, such that it can be treated as a proxy for the necessary site-specific flood risk assessment.
29. For example, details of the land levels at the appeal site are not before me and I cannot be satisfied that the FRA's comparison of flood levels, land levels and floor levels would apply to the appeal proposal before me. Therefore, I am not satisfied that the design of the proposed building, which would provide voids between the underside of its floor and the ground, would be made safe for its lifetime and without increasing flood risk elsewhere.
30. Taking all the above into account, and notwithstanding the sequential test, the appellant's submitted FRA has failed to demonstrate that the proposed development would not be subject to an unacceptable risk of flooding or would unacceptably increase flood risk elsewhere. Therefore, it would be contrary to Framework Paragraphs 170 and 181, the requirements of which are set out above, and MBCLPR Policy LPRSP14(C), insofar as it requires new development within Flood Zones 2 or 3 to include a Flood Risk Assessment.

Other Matters

31. The appellant refers to a medical condition and indicates that the proposal would be conveniently accessible from their residence and would provide them with a level of exercise that would be beneficial to that medical condition as well as providing them with an income. I have had regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which requires decision makers to have due regard to, amongst others, the need to eliminate unlawful discrimination and to advance equality of opportunity between persons who share a relevant protected characteristic, including disability, and those who do not.
32. I am not satisfied on the evidence before me that the appeal proposal would be the only means of providing the appellant with a level of exercise beneficial to their medical condition. Whilst the appeal proposal would be located a short walk from the appellant's residence, I am satisfied that the adverse effects of dismissing this appeal would, on the basis of the evidence before me, be proportionate in this instance when balanced against the legitimate planning purposes of managing development in the countryside, avoiding harm to the character and appearance of the area, and managing flood risk.
33. I have already found that an agricultural contracting business would not fall within the definition of agriculture. Nonetheless, the proposal before me would benefit from the Framework's support in paragraphs 88 and 89 for a prosperous rural economy. Its use would be modestly economically beneficial and would deliver environmental benefits, including through generating renewable energy, delivering a net gain in biodiversity and reusing rainwater.

34. The Framework also recognises that planning policies and decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements. However, as set out above there is limited evidence to demonstrate that the proposed building would be necessary or proportionate for the purposes of agriculture on land used as an agricultural trade or business, or to indicate that the appellant has pursued alternative locations for an agricultural contractors premises either in or adjacent to rural settlements. I am not aware of any other policies that would enable an agricultural contracting premises to comply with MBCLPR Policy LPRSP9, which seeks to restrict development in the countryside, subject to specific exceptions.
35. Framework paragraph 89 requires rural development to be sensitive to its surroundings. For the reasons given above, I have found that the appeal proposal would not be sympathetic to local character or the rural landscape, and it would harm the intrinsic character and beauty of the countryside, contrary to paragraphs 135 and 187. It would also be subject to an unacceptable risk of flooding and would unacceptably increase flood risk elsewhere, contrary to Framework Paragraphs 170 and 181, and its sequential approach for directing development away from areas at the highest risk of flooding. When assessed against the Framework, I find that the benefits of the proposal would be outweighed by the harms.
36. The proposal would comply with criterion (ii) of MBCLPR Policy LPRCD5 insofar as it would not harm the amenity of existing residents. However, an absence of such harm would be a neutral factor.

Conclusion

37. The proposed development would be harmful to the character and appearance of the area, and in the absence of technical evidence to the contrary it would be subject to an unacceptable risk of flooding and would increase flood risk elsewhere. Those harms are important matters that carry weight of a high order against it. On the evidence before me the proposed development would not be proportionate and necessary for the purposes of agriculture on land used for an agricultural trade or business. As such, those harms would not be outweighed by a demonstrable need for the proposed development for the purposes of agriculture or its wider benefits.
38. The appeal proposal's harms bring it into conflict with the MBCLPR Policies LPRCD5, LPRSP9, LPRSP15, LPRQD4 and Policy LPRSP14(C), and the development plan as a whole. The conflict with the development plan carries substantial weight against the proposal. There are no other material considerations, including the provisions of the Framework, to outweigh this finding and indicate that the appeal should be decided other than in accordance with the development plan. I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR