



Appeal Decision

Site visit made on 24 March 2026

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2026

Appeal Ref: APP/U1430/C/23/3330526

Long Acre Farm, Whydown Road, Bexhill-on-Sea, East Sussex TN39 4RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr. Wesley Clark against an enforcement notice issued by Rother District Council.
- The notice was issued on 6 September 2023.
- The breach of planning control as alleged in the notice is *without planning permission, the formation and laying out of a means of access ("the Access") including the removal of a field gate and hedgerow, the construction of brick piers with timber gates, sleepers and fencing surrounding the new Access, the laying of hardcore and the associated formation of an access track ("the Track") in the approximate position shown coloured green on the attached plan.*
- The requirements of the notice are:
 - (i) *Break up and remove all hardcore, rubble, surfacing and materials imported on to the Land to create the Access*
 - (ii) *Demolish, dismantle and remove the brick piers, timber gates, sleepers and fencing surrounding the new Access*
 - (iii) *Break up and remove all hardcore and surface materials comprising the Access from the Land*
 - (iv) *Break up and remove all hardcore and surface materials comprising the Track from the Land*
 - (v) *Remove from the Land all materials, rubble, rubbish, debris, machinery, tools and equipment arising from compliance with the above requirements.*
- The period for compliance with the requirements is: *twelve months after this notice takes effect*
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). 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.

Formal Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the formation and laying out of a means of access ("the Access") including the removal of a field gate and hedgerow, the construction of brick piers with timber gates, sleepers and fencing surrounding the new Access, the laying of hardcore and the associated formation of an access track ("the Track") in the approximate position shown coloured green on the plan attached to the notice at Long Acre Farm Whydown Road, Bexhill-on-Sea, East Sussex TN39 4RB, subject to the conditions in the attached schedule.

Preliminary Matters

2. There are two other appeals at this site made by the same appellant against two additional enforcement notices issued by Rother District Council which are subject to separate decisions. These notices relate to a) change of use of the Land from agriculture to a mixed use for agriculture and for residential purposes, including the associated siting of shipping containers, residential outbuildings, portacabin, motor

vehicles, and stationing of caravans¹; and b) the erection of a barn and smaller buildings².

Hidden ground (e) appeal

3. The appellant questions the validity of the notice, as part of the appeal site had been sold to another party independent of the appellant, when the enforcement notice was issued.
4. An appeal on this ground relates to whether the notice was served as required by section 172 of the 1990 Act (as amended). Section 172(2) of the 1990 Act (as amended) requires a copy of the notice to be served on the owner³, occupier and any person having an interest in the land which, in the opinion of the Council as Local Planning Authority, is materially affected by the notice. Such persons normally include mortgagees, tenants, and sub-tenants. It is for the Council to decide who is materially affected.
5. The appellant highlights that they sold part of the land in August 2022 to Mr Stephen G Demain, which was prior to the enforcement notice being issued. Mr Demain had been a resident at the site when the notice was issued. Therefore, as an owner and/or occupier and/or person having an interest in the land he should have been served a copy of the enforcement notice.
6. From the information before me, Mr Demain was indeed issued with a copy of the enforcement notice. Therefore, I am satisfied that all parties with an interest in the land received a copy of the notice and as a result no recipient has been prejudiced.
7. Consequently, the hidden ground (e) appeal fails.

Appeal under ground (a), the deemed planning application

Main issues

8. The main issues are:
 - the effect on the function of the agricultural holding; and
 - the effect the access and track have on the character and appearance of the area.

Reasons

Effect on the function of the agricultural holding

9. The appeal site is an agricultural field approximately 17.5 acres located close to Bexhill-on-Sea in Sussex. The surrounding area is mainly rural with verdant rolling fields, albeit there are pockets of houses interspersed within the immediate area along with a large solar farm to the north. The appeal site was originally used for grazing and has an agricultural land classification as poor.

¹ PINS Ref: APP/U1430/C/23/3330524

² PINS Ref: APP/U1430/C/23/3330531

³ Under s336(1), "owner", in relation to any land, means...a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let'.

10. The farm is accessed via a gated entrance from Whydown Road to the south of the appeal site. There are several buildings and structures at the site consisting of a mixture of agricultural barns, sheds and containers for the welfare of animals. There is also a residential unit consisting of shipping containers joined together in the middle of the site where the appellant resides, along with a portacabin closer to the entrance under separate ownership but also in residential use by Mr Demain.
11. From the information before me the agricultural use at Long Acre Farm now consists of a mixed livestock holding which currently includes horses, sheep, goats, pigs, turkeys and chickens. Notwithstanding my findings on the separate appeal (3330524) in relation to the need for a full time rural worker to reside at the site, the existing business produces a variety of niche and rare breed products on a relatively small scale. Nevertheless, the agricultural statement⁴ highlights that in 2020 the farm was involved in the breeding of goats for milking and for meat as well as farrowing pigs to include in meat boxes and to continue their pedigree line. Surplus pigs and lambs are sold through local markets and butchers. The farm also rears turkeys for Christmas and produces chicken eggs throughout the year.
12. Access to the various areas associated with the livestock for routine tasks would be required throughout the year. These would include daily tasks such as the checking and feeding of animals and the maintenance of the farm. Other more labour intensive times such as delivering and collecting livestock for slaughter, along with birthing periods, may require additional access including the use of specialist agricultural vehicles.
13. The track provides a hard surfaced route from the access at Whydown Road, to the existing agricultural buildings at the site, which are subject to a separate appeal (3330531). Given the linear nature of the appeal site, it is logical to assume that an access and track would be required for agricultural vehicles to gain egress and access to the site, providing the safe movements of vehicles and agricultural machinery, particularly in adverse weather and ground conditions. The provision of safe and functional vehicular access would be an essential requirement for farm workers and visitors alike. The track itself would not create any significant increase in vehicle movements, moreover it facilitates the ease of movements between the existing agricultural buildings at the site.
14. The appellant highlights a potential fallback position in respect to the access and track, alleging it would be 'permitted development' under the provisions of Schedule 2 Part 6 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, A.2(2)(b) of the GPDO states that the formation or alteration of a private way is subject to a prior notification process. I have been presented with limited details in respect to whether prior notification has been submitted or issued by the Council. Nor have I been provided with a formal certificate of lawfulness for these works. As the access and track are in situ given the retrospective nature of the scheme, it would therefore not be appropriate to speculate on its lawful status. I therefore give limited weight to this as a fallback option.
15. Nevertheless, I conclude that there is an existing agricultural operation on the land, operating as a small livestock holding, and that the provision of an access track is reasonably necessary to access the agricultural buildings, which are subject to the

⁴ Agricultural Statement prepared by Bloomfields Chartered Town Planners dated November 2020

separate appeal (3330531), and therefore used to serve an existing agricultural operation. It would therefore conform to the relevant sections of policies OSS3, RA2 and RA3 of the Rother District Council Local Plan Core Strategy (RCS), adopted 29 September 2014, which collectively seek the need to maintain farming capacity of the district, and support the agricultural industry, including diversification within farming. It would also accord with paragraph 88 of the National Planning Policy Framework (the Framework) which seeks development and diversification of agricultural and other land-based rural businesses, amongst other things.

Character and appearance

16. The appeal site is on the periphery of any local settlement where the relatively tight and more urban development pattern becomes sporadic and distinctly rural in appearance. The site itself is linear, well-screened and hidden from most public vantage points with boundary treatments consisting of well-established mature hedgerows and trees, adding to the verdant feel of the area.
17. Whilst located close to a small cluster of existing development along Whydown Road, the area to the north is largely devoid of built structures providing an undeveloped, agricultural appearance, albeit there is a large solar farm close by in the adjoining district. I have taken account of the pattern and form of development which exists locally, and the site appears more as part of the rural area to the north rather than either the small cluster of development close to the site or the established settlement of Bexhill-on-Sea to the south.
18. The site is accessed via a setback gated accessway opposite the small cluster of dwellings on Whydown Road. The access consists of a sloped driveway with timber sleepers and timber fencing and gates, which are fixed to brick pillars. The boundary consists of well-established trees, hedges and shrubs, providing an effective green screen of the appeal site from external views. As such, views of the appeal site are not readily visible from local public vantage points, with specific reference to Whydown Road. Despite its sizable presence the use of the timber panels and sleepers provide a suitable access to the site. The setback provides an appearance which whilst safe is appropriate within its setting.
19. In terms of the track the current visual impact is low and given the existing agricultural use, the provision of an access and track would be associated with such a setting. In terms of materiality the use of broken up hardcore as a surface, does provide an additional degree of development within the existing rural environment. However, I would acknowledge that such access routes and hardstandings are common in rural areas. As with the appeal site, they are generally not uniform in appearance, providing a more functional grassed and/or self-seeded presence, which blends in with the rural environment over time.
20. Overall, the setting of the access and the track form a relatively discrete part of land associated with an agricultural use, which is appropriate within this agricultural landscape. The topography and vegetation in the vicinity of the site limits opportunities to view the track, whilst the access is also setback from the roadside limiting views. The current treatment, in my view, therefore conforms with the rural character of the area.
21. Consequently, the development would accord with the relevant sections of policy DS5 of the Adopted Rother District Local Plan (RLP), adopted July 2006; RCS

policies OSS2, OSS3, OSS4 and EN1; policies DEN1, DEN4, DIM2 and DHG11 of the Rother District Council Development and Site Allocations Local Plan (RSALP), adopted 16 December 2019, which collectively seeks development to be of a high-quality of design that makes a positive contribution to its local character, including an understanding of the site, how it relates to the existing area and to improve the quality of the landscape, amongst other things.

Other matters

Drainage and pollution

22. The Council have raised concerns in respect to surface water being disposed through sustainable water drainage systems (SuDS) and a soakaway. During the previous application⁵ the Environment Agency (EA) advised that the agricultural use of the development site presented a medium risk of contamination that could be mobilised by surface water infiltration from the proposed SuDS. This could pollute controlled waters. Nevertheless, the EA suggested a condition could be attached to any planning permission, to ensure that no drainage systems for the infiltration of surface water to the ground are permitted. In the absence of any information to the contrary, I concur with this approach and will attach a condition accordingly.

Biodiversity

23. Whilst located in close proximity to the High Peartree, Smiths & High Woods Site of Nature Conservation Importance (SNCI), Site of Special Scientific Interest (SSSI) and ancient and semi-natural woodland the appeal site is nonetheless outside these designated habitats. Prior to the commencement of development, a competent ecological survey should have accompanied a planning application, in order to accurately establish a baseline against which the effects of the development proposal could have been judged.
24. The appellant highlights they have provided a new pond alongside other environmental enhancements to encourage biodiversity at the site. This has provided habitats for birds, amphibians, invertebrates and plant species. Since the track and access have been constructed, and as confirmed on my site visit, the area has been subject to significant colonisation by various flora and fauna including protected species, thus providing an ecological enhancement in the vicinity.
25. Despite its retrospective nature, the development does provide a gain in biodiversity at the site, and it is likely that the requirements of the notice would create disturbance to these areas, with a potential loss to the habitats and species currently inhabiting the pond and the surrounding area. This approach would be problematic and likely to cause additional harm to the existing ecological value of the site. This approach would therefore be contrary to the Framework; RCS policy EN5 and RSALP policies DEN4 and DEN7 which collectively seek proposals to conserve or enhance biodiversity in a manner appropriate to the local context, having particular regard to locally present priority habitats and species.
26. Furthermore, conditions could be attached to ensure that additional landscaping is provided. This would include the retention of existing hedgerows and provision of

⁵ Rother District Council Planning Ref: RR/2020/1779/P

additional vegetation to be planted, alongside the submission of an ecological design strategy (EDS), in order to maintain the existing habitats.

Highway safety and parking

27. I have been presented with limited information that the access would represent an increased risk to highway safety at the site. Indeed, from the evidence before me, East Sussex County Council as Highways Authority raised no objection to the use of the access under the previous planning application, subject to conditions.
28. Nevertheless, during my site visit, I drove through and walked along the access to the appeal site. The junction of the appeal site with Whydown Road is setback from the roadside and is situated on a slope. Whilst at the site I observed extremely limited traffic using Whydown Road. Due to the narrowness and existing vegetation lining the road, any traffic using Whydown Road is likely to be moving at a far lower speed than the national speed limit, to which the road is subject. Also, drivers entering and exiting the site would be manoeuvring slowly.
29. In the lack of any technical data from the Council to lead me to find to the contrary, drivers on Whydown Road would have sufficient forward visibility of the access to the appeal site. This coupled with an anticipated reduction in speed given the existing road conditions, in my view, is likely to provide sufficient time to react safely when vehicles are using the access. As such, as the area is only lightly trafficked, with low speeds, there is insufficient evidence before me to demonstrate that the proposal would significantly impact on highway safety.
30. Similarly, limited information has been supplied in regard to parking and/or turning on-site. Again, having visited the farm, it is acknowledged that turning on site is tight given the narrowness of the track. Subsequently, slow, careful and precise driving manoeuvres would be necessary in order to turn on site. Nonetheless, there are areas within the site that whilst restricted, are sufficient for vehicles to both park and also to turn, which would ensure that vehicles can both enter and exit the site in forward gear. The appeal site would therefore accord with the relevant sections of RCS policies TR4 and CO6 and DHG12 of the RSALP which seek development to be acceptable in terms of highway safety, amongst other things.

Conclusion on ground (a)

31. Overall, I have found that there is an agricultural need for the access and track at the appeal site. Subject to conditions the scheme would be acceptable in this location and would ensure that its visual impact is not significant on the existing landscape. It would therefore conform with the intentions of the relevant policies in the Local Plan and the Framework as detailed above.

Conditions

32. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed them with reference to the advice in the Framework and National Planning Practice Guidance and have amended the wording of some without altering their fundamental aims.
33. Given that the permission is being granted retrospectively, in this instance it is not necessary to attach the standard time limit condition or approved plans.

34. I have imposed a condition in respect to the material specification of any resurfacing works to the track in order to ensure an acceptable visual effect and to protect the rural character and appearance of the landscape.
35. In the ecological interests of the site, including the conservation of protected and priority species, I have included conditions requiring details of landscaping and details of an EDS to be submitted to the local planning authority. In addition, to conserve biodiversity and the rural character of the area, I have included a condition requiring submission of details of any external lighting to be installed.
36. To protect water quality and habitats, a condition requiring submission of details of a proportionate drainage strategy is necessary given the small scale of the proposal.

Overall Conclusion

37. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the operations as described in the enforcement notice. The enforcement notice will be quashed.
38. In these circumstances the appeal on ground (f) does not fall to be considered.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) No resurfacing of the track shall take place until details of the materials to be used in the construction of the track surface have been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.
- 2) Within 6 months of the date of this decision, details of a scheme of landscaping including tree, hedge, and hedgerow planting shall be submitted in writing to the local planning authority. The scheme shall also include details of all existing species to be retained and measures for their protection, new planting, including details of species, plant sizes, proposed numbers and densities, including a timetable for implementation, maintenance and management. The scheme shall be implemented in accordance with the approved details and retained thereafter.
- 3) If, within a period of 5 years from the date of planting, any trees, hedges or plants (or any tree, hedge or plant planted in replacement for it) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree, hedge or plant of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree, hedge or plant, unless the local planning authority gives its written consent to any variation.
- 4) Within 6 months of the date of this decision an ecological design strategy (EDS) shall be submitted to the local planning authority.

The EDS shall include but not limited to the following:

- a) Purpose and conservation objectives for the works.
- b) Review of site potential and constraints including full ecology surveys.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. local species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance.
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from the works.

The EDS shall be implemented within 3 months of its approval in accordance with the approved details and maintained in accordance with that scheme thereafter.

- 5) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated at the site, unless a scheme has first been submitted to and approved by the local planning authority. The

scheme shall detail that any lighting is to be low level, hooded and directional. The scheme shall be implemented in accordance with the approved details and retained thereafter.

- 6) Within 6 months of the date of the appeal decision, a scheme for the provision of foul and surface water drainage works in relation to the track on the site, shall be submitted in writing by the local planning authority. Within 3 months of the written approval of the local planning authority, the foul and surface drainage works shall be provided and thereafter maintained in accordance with the approved details.

END OF SCHEDULE