



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/23/3330531

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 23 August 2023.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of a barn and smaller buildings ("the Buildings") in the approximate positions shown edged and coloured blue on the attached plan.*
- The requirements of the notice are:
 - (i) *Demolish, dismantle and remove the Buildings from the Land*
 - (ii) *Break up and remove all hardcore, rubble, surfacing and materials comprising any bases or hardstanding upon which the Buildings are sited.*
 - (iii) *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 1990 Act (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. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "*a barn and smaller buildings (the buildings)*" and its substitution with the words "*buildings A, B, C and E*" in Section 3 of the notice;
 - the deletion of "*the buildings*" and substitution with the words "*building A*" in section 5(i) of the notice;
 - the deletion of "*the buildings are*" and substitution with the words "*building A is*" in section 5(ii) of the notice;
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the corrections, the appeal is allowed insofar as it relates to buildings B, C and E and planning permission is granted for the retention of these buildings on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), and subject to the conditions in the attached schedule.
3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to building A and planning permission is refused for the retention of building A in respect of the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Preliminary Matters

4. There are two other appeals at this site made by the same appellant against two additional enforcement notices issued by Rother District Council and 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 formation and laying out of a means of 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 track².

The enforcement notice

5. The plan attached to the enforcement notice highlights the buildings against which the alleged breach of planning control relates. These buildings are bounded by blue lines. Given my findings, it would be prudent to identify which buildings the split decision relates.
6. Building A consists of the tallest structure at the site originally built for cattle. It is currently being used as a stable to house the horses to the northern end of the appeal site. Buildings B are single storey units that are used to house the chickens and other poultry livestock. Buildings C are again functional single storey units used for the housing of pigs, sheep and goats. The buildings at position E are sheds associated with the agricultural holding. Building D consist of five shipping containers joined together, with building F being a portacabin. Both buildings D and F are currently used for residential purposes. Building G is a shipping container used for ancillary storage associated with the use of building F.
7. Buildings D, F and G are subject to a separate enforcement notice and dismissed appeal (3330524). Consequently, given the requirements of the enforcement notice subject to the other appeal, buildings D, F and G will be removed from the site, thus have been omitted from this appeal decision. Whilst still shown on the amended plan attached to this notice, these are for annotation purposes only, to identify the relevant buildings.
8. Overall, the amendments have not altered the area of the plan but merely seek to clarify the location of the buildings, and to which buildings the corrected notice relates, as such there has been no injustice to either party.

Hidden ground (e) appeal

9. 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.
10. 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

¹ PINS Ref: APP/U1430/C/23/3330524

² PINS Ref: APP/U1430/C/23/3330526

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'.

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.

11. 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.
12. 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.
13. Consequently, the hidden ground (e) appeal fails.

Appeal under ground (a), the deemed planning application

Main Issues

14. The main issues are:
 - the need for the buildings at the appeal site; and
 - the effect the buildings have on the character and appearance of the area.

Reasons

Need for buildings

15. 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.
16. 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 (building D), along with a portacabin (building F) closer to the entrance under separate ownership but also in residential use by Mr Demain.
17. 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.

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

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.

18. 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.
19. The various agricultural buildings would be required to provide shelter for the livestock during inclement weather, thus providing an important function for animal welfare. Given its existing agricultural use, the provision of buildings to provide shelter are reasonably necessary to serve the farming operation.
20. The appellant highlights a potential fallback position in respect to the buildings, 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)(a) of the GPDO states that the erection, extension or alteration of a building 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 buildings are in situ given the retrospective nature of the scheme, it would therefore not be appropriate to speculate on their lawful status. I therefore give limited weight to this as a fallback option.
21. Nevertheless, the provision of buildings A, B, C and E are reasonably necessary to serve the farm and 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

22. 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.
23. 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.
24. 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.

25. Under a separate appeal decision (3330524) I have found the residential and ancillary development (buildings D, F and G) harm the rural character of the area. These buildings are subject to a separate enforcement notice that requires the removal of all residential and domestic items and paraphernalia associated with the unauthorised use of the land. As such, these buildings do not form part of this appeal and I have corrected the notice accordingly, as detailed above.
26. Given the linear nature of the appeal site, the buildings have been dispersed along the access track subject to a separate appeal (3330526). Many of the buildings have used repurposed materials including containers, trailers and timber structures. It is acknowledged that the provision of the functional structures results in an intensification of development within the rural environment, however the spreading of these structures provides a more informal occupation of the land, rather than grouped together. The buildings are mainly single storey and given their rural like appearance, they do not appear out of keeping within an agricultural setting. This coupled with the aforementioned enclosed nature of the appeal site, restricts views of the structures to glimpses only.
27. Even if limited longer views of the site are afforded, given their small scale and spread out nature, the structures would appear akin to other small scale farmsteads. Thus, in terms of public exposure, the site is rendered relatively indistinct and makes little contribution in itself to the open rural character or its wider surroundings particularly given its small scale nature. Any adverse impacts on the character and appearance of the area would be limited.
28. The dispersed appearance has resulted in the stables used for the horses (building A) being located at the far end of the farmstead at the end of the track. This is the tallest structure with a ridged roof, and given its timber construction, visually it is not at odds within the setting. However, its position is close to an existing wooded backdrop. This position adjoins the High Peartree, Smiths & High Woods Site of Nature Conservation Importance (SNCI), Site of Special Scientific Interest (SSSI) and ancient and semi-natural woodland.
29. The Planning Practice Guidance (PPG) and the Framework advises that ancient woodland is an irreplaceable habitat and is an area that has been wooded continuously since at least 1600 AD. Paragraph 193 c) of the Framework states that development resulting in the loss or deterioration of ancient woodland should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.
30. Furthermore, standing advice published by Natural England and the Forestry Commission recommends that for ancient woodlands, development proposals should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage within root protection areas (RPAs).
31. The positioning of building A is within 15 metres of the red line boundary, thus is likely to fall within the buffer of the ancient woodland recommended in the standing advice. The standing advice sets out that indirect effects of development can cause

the loss or deterioration of ancient woodland by, among other things, breaking up or destroying working connections between woodlands, reducing the resilience of the woodland or trees making them more vulnerable to change, and pressure for tree management.

32. The appellant has supplied limited details in respect to any foundation works for building A. They have also failed to supply an arboricultural impact assessment (AIA) in respect to potential impacts on the RPAs of any trees. Given the proximity of building A to the existing trees outside the appellant's ownership, there would be potential for their RPAs to be impacted. Furthermore, no evidence has been submitted with the appeal to indicate whether any protection for these trees had been made during the construction phase.
33. In the absence of any evidence highlighting building A has not harmed the surrounding trees or that the trees were protected during construction or any information to the contrary, I must adopt a precautionary approach. Consequently, whilst I find no harm to the character and appearance of the area in regard to buildings B, C and E, the position of building A is unacceptable.

Other Matters

Drainage and pollution

34. 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

35. Whilst located in close proximity to the High Peartree, Smiths & High Woods SNCI, 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.
36. 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.
37. 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

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

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.

38. Furthermore, conditions could be attached to ensure that additional landscaping is provided. This would include the retention of existing hedgerows and provision of additional vegetation to be planted, alongside the submission of an ecological design strategy (EDS), in order to maintain the existing habitats.

Conclusion on ground (a)

39. Overall, given their relatively small nature and agricultural appearance, I have found that buildings B, C and E 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.
40. However, the positioning of building A is within the 15 metres buffer of the ancient woodland recommended in the standing advice. The proposal would therefore conflict with the relevant sections of RLP policy EN1 and RSALP policy DEN4, which amongst other things seek to protect and conserve biodiversity habitats, along with the provisions of the Framework which also aims to conserve and enhance the natural environment. This aspect is in conflict with the Development Plan taken as a whole.
41. Consequently, the ground (a) appeal only partially succeeds in regard to buildings B, C and E and fails in respect to building A.

Conditions

42. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and PPG and have amended the wording of some without altering their fundamental aims.
43. Given that the partial permission is being granted retrospectively, in this instance it is not necessary to attach the standard time limit condition or approved plans.
44. In order to retain the agricultural use of the remaining buildings (B, C, and E) at the site, I have attached a condition to ensure that these buildings are to be retained for an agricultural purpose for the lifetime of the development.
45. 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.

46. 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.

Appeal under ground (f)

47. An appeal on ground (f) is whether the requirement is excessive to achieve the purpose of the notice. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.
48. The requirements of the enforcement notice are clear, to demolish, dismantle and remove the buildings from the land, therefore I am satisfied that the purpose of the notice is to remedy the breach of planning control. However, given my findings in regard to buildings B, C and E under ground (a), the deemed planning application, ground (f) does not fall to be considered for these structures. Therefore, the ground (f) appeal specifically relates to building A.
49. The appellant suggests lesser steps could involve relocating building A elsewhere on the site, away from the ancient woodland. However, I have not been presented with any alternative locations for this building. I acknowledge that relocating the structure elsewhere at the appeal site would provide an alternative scheme to the requirements stated in the notice, at significantly less cost and disruption to the appellant. However, these measures would not achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred.
50. Whilst I have found that the current position would be unacceptable, given its proximity to the ancient woodland, this does not preclude the appellant from exploring an alternative scheme with the Council via an appropriate planning application. I note the period of compliance is twelve months and this should be sufficient to gauge whether any agreement on whether an alternative location is appropriate.
51. Consequently, the steps set out in the enforcement notice are not excessive insofar as they relate to building A. They are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place.
52. Consequently, the ground (f) appeal fails in regard to building A.

Overall Conclusion

53. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for buildings B, C and E.
54. I will uphold the notice with corrections and refuse to grant planning permission in respect of building A. The requirements of the notice will cease to have effect insofar as they are inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Robert Naylor INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The buildings hereby approved shall not be used for any purpose other than agricultural use as defined within Section 336 of the Town and Country Planning Act 1990.
- 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 buildings on the site, shall be submitted to and approved 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

PLAN

