

**SUPPLEMENTARY PLANNING, DESIGN AND ACCESS STATEMENT** to be read in conjunction with drawings submitted for:

**Brookside Farm, Dagbrook Lane, Henfield, West Sussex BN5 9SH**

**Erection of 2 x new build dwellings; in the alternative to permission granted under DC/22/1036 Prior Approval of Proposed Change of Use of Agricultural Building to form 3 dwellinghouses (revised application further to DC/24/0863**

**Executive summary**

Application DC/24/0863 was refused for the 2 reasons; **comments added**. The italicised extracts from officer report state:

*The western barn has previously been granted a prior approval consent for a Change of Use of Agricultural Building to residential (Use Class C3) to form 3no dwellinghouse (ref. DC/22/1036). An informative was attached to the permission advising that the decision relates solely to whether the Prior Approval of the Local Planning Authority is required, and did not confirm that the proposal represents Permitted Development. It is a condition of Permitted Development (Article 3(1) of the Town & Country Planning (General Permitted Development) (England) Order 2015, as amended) that development likely to have a significant effect on a European Site "must not be begun" until an application has been made to Natural England for its opinion as to whether the development is likely to have a relevant effect. As the site lies within the Sussex North Water Supply Zone where Natural England has advised that water extraction cannot be concluded as having no adverse effect on the integrity of the Arun Valley Special Area Conservation (SAC), the Arun Valley Special protection Area (SPA) and the Arun Valley Ramsar Site, significant effect must be ruled out in order to establish the permitted development (Via a HRA application). No such application has been submitted by the applicant to establish that the consent is capable of being implemented. It would not in this instance therefore form a viable fallback.*

**Comments** – the following applications have been submitted and registered which will establish that full weight can be given to the fallback position.

- **Application for Approval of Details Reserved by Condition 1 and 2 to approved application DC/22/1036** 

Brookside Farm Dagbrook Lane Henfield West Sussex BN5 9SH  
Ref. No: DISC/24/0230 | Validated: Wed 11 Sep 2024 | Status: Registered

- [Application under Regulation 77 of the Conservation of Habitats and Species Regulations 2017 relating to Prior Approval consent DC/22/1036](#) 

Brookside Farm Dagbrook Lane Henfield West Sussex BN5 9SH  
Ref. No: HRA/24/0016 | Validated: Tue 10 Sep 2024 | Status: Registered

### **Comments on RFR...**

1 The proposed development would be sited within an unsustainable location in the countryside, outside of a defined built-up area boundary, and on a site not allocated for housing development within the Horsham District Planning Framework, or a made Neighbourhood Plan. Furthermore, the proposed development is not essential to its countryside location. Notwithstanding the absence of a five-year land housing supply, and the provisions of the National Planning Policy Framework (2023) at paragraph 11(d), it is not considered that there are any material considerations in this instance which would outweigh harm arising from conflict with Policies 1, 2, 3, 4 and 26 of the Horsham District Planning Framework (2015) and Policy 1 of the Henfield Neighbourhood Plan (2021).

**Comments –** With an established fallback permission for 3 dwellings the proposed development for two dwelling in the alternative can be considered sustainable development.

2 Notwithstanding information submitted, insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), thus the Local Planning Authority is unable to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

**Comments –** The updated WATER NEUTRALITY REPORT and WATER MANAGEMENT PLAN dated 10th August 2024 provides sufficient information to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation.

## Site and Proposal

Brookside Farm lies to the south of Dagbrook Lane, Henfield. Site is located within countryside but no other statutory designations. The site is within a rural area characterised by farms and individually designed dwellings.

The buildings to be demolished are not Listed nor within a Conservation Area.



**Above Annotated aerial photo**

## Design and Development Objectives:

High quality rurally appropriate design with siting, layout, scale, form and appearance, enhancing the openness of the countryside (through demolition of existing buildings), absorbing the development in the landscape and respecting local vernacular.

The **traffic light highlighting** and bold type face throughout the Planning Statement emphasises the suitability of the proposal against the material planning considerations as part of the planning balance exercise. The proposed development would represent a planning gain in several respects as outlined within the main body of the statement.

## Planning history

DC/22/1036 - Prior Approval of Proposed Change of Use of Agricultural Buildings to form 3 dwellinghouses – **PERMIT**

**DC/21/2040** - Erection of 3 x new build dwellings (alternative to Prior Approval ref: DC/20/1881 for Change of Use of Agricultural Buildings to form 4 dwellinghouses) – refused for the following reasons. **Comments added.**

1 The proposed development would be located beyond a defined built-up area, on a site not allocated within the Development Plan, further not deemed to represent a form of development essential to this countryside location. The development would therefore be **contrary to the overarching spatial strategy** and hierarchy approach of concentrating development within defined settlements and advocating a planned approach to settlement expansion, contrary to policies 1, 2, 3, 4 and 26 of the Horsham District Planning Framework (2015) and policy 1 of the Henfield Neighbourhood Plan (2020). Notwithstanding the absence of a 5-year land housing supply, and the provisions of the National Planning Policy Framework (2021) at paragraph 11(d), it is not considered that there are any material considerations in this instance which would outweigh harm arising from conflict with Local and Neighbourhood Plan policies in these regards.

**Comments** – A fallback permission exists for 3 dwellings which would be built in the alternative to the current proposal. The DC/22/1036 permission contained a single Pre-Commencement Condition with regards to contamination. A Preliminary Contamination Risk Assessment dated August 2023 is included with this application which concludes:

*“Subject to the appropriate removal and disposal of the suspected asbestos cement cladding, the overall risk rating for the site is 1, low risk. However, should garden or soft landscaping areas be included, this risk rating will be increased to 2, moderate, and testing of soil in proposed garden areas would be recommended”.*

2 The proposed development would result in dwellings of a **significant scale** comparable to existing agricultural buildings which they would respectively replace. It is considered that the proposals would fail to provide benefit to local landscape character, with dwellings of the scale, and design proposed deemed to represent an incongruous form of development which would fail to preserve or enhance the character and appearance of this rural location contrary to policies 25, 26, 32 and 33 of the Horsham District Planning Framework (2015) and policy 12 of the Henfield Neighbourhood Plan (2020).

**Comments** – The dwellings have purposefully been designed with catslide roofs to break up their bulk. The table below confirms that there will be a substantial reduction in built footprint of 278m<sup>2</sup> which will reinstate the openness of the countryside.

Development type	(i) Existing gross internal floorspace (square metres)	(ii) Gross internal floorspace to be lost by change of use or demolition (square metres)	(iii) Total gross internal floorspace proposed (including change of use, basements, and ancillary buildings) (square metres)	(iv) Net additional gross internal floorspace following development (square metres) (iv) = (iii) - (ii)
Market Housing (if known)			513.18	513.18
Social Housing, including shared ownership housing (if known)				
Total residential floorspace			513.18	513.18
Total non-residential floorspace	791.34	791.34		-791.34
Total floorspace	791.34	791.34	513.18	-278.16

3 It has not been demonstrated to the satisfaction of the Local Planning Authority, in the **absence of site-specific ecological investigation**, that the proposals would not unacceptably impact upon protected species present within, or in the vicinity of the site, or that any adverse effects can be adequately avoided or mitigated against contrary to policies 25 and 31 of the Horsham District Planning Framework (2015).

**Comments** – A detailed ecology report prepared by Richard Law at Sylvatica Ecology accompanies the application and includes ecology and biodiversity enhancements.

4 Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of **increased water abstraction**, contrary to policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

**Comments** – A water neutrality report accompanies the application and confirms that with the use of rainwater harvesting and the installation of efficient water fittings that the proposal would be water neutral.

## DC/21/0993 Erection of a two-storey dwelling – **PERMIT**

COMMENT – Italicised extracts below from officer report providing analogous support for the current proposal...

**6.6 Policy 1 of the Henfield Parish Neighbourhood Plan states that development proposals outside of the defined built-up area boundary will be supported where they conform, as appropriate to their location in the neighbourhood area, to national and HDPF policies in respect of development in the countryside.**

*6.11 While the provision of new dwellings in the countryside would not usually be supported in policy terms, it is recognised that the site benefits from an extant Class Q Prior Approval permission under reference DC/20/0817 for the conversion of the agricultural buildings to C3 Residential. The conversion permitted the conversion of the buildings to 3no. 2-bed dwellings and 1no. 4-bed dwelling. Fallback is a material consideration in the decision-making process, and when making a determination, weight needs to be given to the fallback position. The weight to be given to such material consideration varies according to whether what could have been built under previous applications would result in a broadly similar or worse impact to the development proposed; and the reasonable likelihood that if permission were refused, the previous approval(s) would be implemented.*

*6.12 A previous full planning application under reference DC/20/2593 considered the fallback position in relation to a new build two storey dwelling. The proposed dwelling was to be repositioned slightly to the north-west of the original barn, albeit that it would partly occupy the footprint of the existing barn. The proposal would measure to a similar footprint and would extend to a greater ridge height than the existing building. It was however considered that the proposal would be of a deliberate domestic design, which was considered to reinforce a far-greater degree of domesticity. In addition, the positioning and extent of the dwelling would marginally intrude onto the existing field pattern and would necessitate the repositioning of an existing farm access. Overall, the proposal was considered to result in a more prominent form of development compared to the fallback scheme, with the increased degree of domesticity considered to result in an incongruous form of development that would bear limited relationship to its agricultural setting and context. It was thereby concluded that the proposed dwelling would have a harmful impact upon the character and appearance of the surroundings, and would result in a greater detrimental impact on the surroundings than the extant prior approval permission under planning reference DC/20/0817.*

*6.13 The increased level of accommodation was also considered to result in a greater demand for services due to the greater occupancy. It was therefore concluded that the proposal, in terms of sustainable access to services and amenities, would prove materially greater than that subject of the extant consent. The weight to be afforded to the presence of an extant consent was not considered to outweigh the conflict with Policy 40 of the HDPF, and the proposal was considered to give rise to a greater level of occupancy and associated demand for services and amenities than the consent under Class Q. The application was refused on the grounds that the proposal would result in adverse effects that would be*

*materially greater than those resulting from the preceding consent, with the degree of weight assigned to the presence of a realistic fall-back not considered sufficient to justify a departure from the Local Plan in this regard.*

**6.14 The current application has sought to address these previous concerns through a re-design of the proposed dwelling. The proposal would be located further to the north-west, similar to that previously proposed and refused under DC/20/2593, albeit that the proposal now seeks to reflect the proportions and scale of the existing building. The proposed dwelling would incorporate black stained weatherboarding and brick plinth, with a pitched clay tiles roof that would extend to a similar height as the existing building. An additional single storey extension is proposed to the northern elevation, with the curtilage of the dwelling extending to a similar area as that previously proposed.**

**6.15 The proposed development would re-locate the building from the southern boundary and the adjacent residential dwelling; would provide additional accommodation across two floors; and would result in a greater number of windows and natural light into the habitable rooms. These elements would result in social benefits that would improve the environment and quality of accommodation for future occupiers, as well as its relationship with the adjacent residential dwelling, and this benefit is considered to be of weight in the assessment of the current application.**

**6.16 The fallback position is a material consideration of weight, with the proposed scheme considered to improve the quality and provision of accommodation within the site, while also improving the building's relationship with the neighbour to the south. While the provision of new dwellings in this countryside location would not usually be supported by policy, given the fallback position through the extant Class Q permission, it is considered that the proposed scheme would result in a built form that would improve and enhance the character of the semi-rural locality. On the basis of the potential to utilise Class Q permitted development rights, and the likelihood of this occurring, the fallback position is considered to be of significant weight to the consideration of the current application. The current application is therefore considered to benefit from a fallback position, with the proposed development likely to provide a better, more rational re-development of the site.**

**6.17 In weighing the policy considerations and the existence of a fallback position, it is considered that the principle of the proposed redevelopment is acceptable, subject to all other material considerations.**

*6.22 The proposed dwelling would now be of similar form and proportions to the existing building, and is considered to sit appropriately within the context of the site and the neighbouring property. The proposal is not therefore considered to result in any further harm to the landscape character and visual amenities of the countryside setting, in accordance with Policies 25, 32, and 33 of the Horsham District Planning Framework (2015).*

### Planning precedent

DC/19/1788 - Lodge Farm Malthouse Lane Ashington West Sussex [Erection of 7no dwellings comprising a mixture of detached and semi-detached properties, with associated parking and landscaping works \(following prior approval permissions to create 9 dwellings \) – PERMIT](#)

The officer report extracts below in relation to the above permission create analogous Planning betterments that can similarly be applied to the current proposal.

*6.14 ... the existing buildings on site are consisted to be relatively modern, utilitarian structures in appearance and are not considered to be of any architectural merit or hold any historical value or importance from a heritage standpoint.*

*6.18 It is considered that the design of the proposed dwellings would represent an enhancement to the site when compared to the existing buildings and their potential conversion to residential. The existing buildings, whilst they have permission under current permitted development rights to be converted to a dwelling, would be limited in terms their aesthetic value following conversion. The proposals, whilst it is acknowledged that they would create a greater overall GIA when compared to the that which would could be achieved under the Prior Approval permissions, would occupy a lesser overall footprint when compared to the existing buildings on site.*

*6.26 The amended proposals would result in an enhancement on the converted buildings which would result from implementation of the existing Prior Approvals and an enhancement of the overall setting of the countryside location. The current application gives greater control over the eventual development of the site, particularly in respect of the detailed design and landscaping, which are considered to be key factors which weigh in favour of supporting the current scheme. As a consequence of the circumstances described above, it is considered that the proposals would accord with Policies 26, 30, 32, 33 and 34 of the HDPF as well as Paragraph 131 of the NPPF.*

### Executive summary to current proposal.

The current proposal in the alternative to the permitted conversion is a natural evolution in the context of the site; the site is well screened by the mature boundary trees and hedging along the wider field boundaries.

The proposed development will enable it to be better integrated into the rural setting of the site thereby improving the design relationship with existing residential dwellings.

From the precedents obtained as planning consultants including several permissions within the Horsham area there would appear to be little ambiguity that the current proposal should be well received on the basis that 2 dwellings are proposed where the existing buildings stand, **one of which has permission to create 3 dwellings.**

The siting of the proposed new build dwellings over the footprint of the existing barns would result in a Planning betterment over what is already permitted and an improved appearance to the site and landscape character which would be in keeping with the rural residential vernacular of the area, compared to the development that could otherwise come forward on the site under the Prior Approval consents.

Based on the extant permissions referenced above a fallback position is engaged.

**The proposal raises substantially similar issues as the permission and approved scheme below:**

DC/17/2354 Erection of 2x detached single storey (with mezzanine floor) four bedroom dwellings following approval of previous application DC/17/1205 (Prior approval for proposed change of use of agricultural building to 2 dwellinghouses (Use Class C3) and associated operational development. Revised application further to DC/17/0373). Hermongers Farm Hermongers Rudgwick Horsham West Sussex RH12 3AL - **PERMIT**

**Similarly, the proposal raises substantially similar issues and as such compares very favourably against 3 recent appeal decisions (\*) together with the recent Court of Appeal decision *Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314* (summarised below) all of which are included in full with application bundle of submission documents.**

## Martin Goodall's Planning Law Blog

### **Can PD rights represent a fall-back position?**

Posted: 29 Sep 2017 04:54 AM PDT

There have been disputes for a number of years as to whether permitted development rights, such as those for the residential conversion of agricultural buildings under Class Q in Part 3 of the Second Schedule to the GPDO, can be called in aid as a fall-back position where a planning application is submitted for other development on the same site. On 8 September, the Court of Appeal upheld a judgment of the High Court that such PD rights can properly be taken into account as a fall-back position where some alternative form of development is then proposed.

The case in question is ***Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314***, in which the leading judgment was given by **Lindblom LJ**. The LPA had granted planning permission in this case for the demolition of an existing agricultural barn and of a bungalow on the application site and to construct four detached dwellings, with garages and gardens.

**'Planning gain' advantages In recommending the LPA's committee to grant planning permission, the planning officer had advised them that, in practical terms, the permitted development rights under Class Q meant that the existing agricultural barn could be converted into three residential units up to a limit of 450 sq m.**

Furthermore, the existing bungalow within the site could be replaced in accordance with an adopted policy in the Local Plan with a new residential building, provided that it was not materially larger than the existing building. He advised that, taken together, these factors could, in effect, give rise to the site being occupied by a total of four residential units (albeit of a different form and type to that proposed by this application). This, the officer observed, provided a realistic fallback position in terms of

how the site could be developed.

The claimant sought to challenge the grant of planning permission on several grounds. He alleged that the planning officer (and hence the council) had misinterpreted the provisions of Class Q; they had wrongly accepted that there was a real prospect of the fallback development being implemented; and they had also misunderstood or misapplied the “presumption in favour of sustainable development” (as defined by paragraph 14 of the NPPF).

Part of this argument turned on the interpretation of the 450 sq m floorspace limit (which, the claimant argued, applied to the entirety of the building in question, and was not confined to the actual floorspace that is actually converted). This argument was rejected both at first instance and by the Court of Appeal. The argument was that an interpretation of the relevant provisions that confined the floorspace limit to the floor area actually converted would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. I confess that I was originally confused myself by the relationship between paragraph Q.1(b) and paragraph Q.1(h), but I then explained the distinction between these two provisions in the Second Edition of *A Practical Guide to Permitted Changes of Use* (in paragraph 9.6 on page 103).

At first instance, Garnham J. accepted that the council was entitled to conclude that there was a “realistic” fallback. The evidence had established that there had been prior discussions between the council and the planning consultant acting for the site owners. It was crystal clear from that contact that the owners were intending, one way or another, to develop the site. Alternative proposals had been advanced seeking the council’s likely reaction to planning applications. It was in the judge’s view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible. It was not a precondition to the Council’s consideration of the fall back option that the owner had made an application indicating an intention to take advantage of Class Q. ***There was no requirement that there be a formulated proposal to that effect*** [my emphasis]. The officer was entitled to have regard to the planning history which was within his knowledge, and the obvious preference of the owners to make the most valuable use it could of the site.

The claimant sought to criticise this approach by reference to *Samuel Smith Old Brewery (Tadcaster) v SSCLG* [2009] J.P.L. 1326 (at paragraph 21) and *R. v SSE, ex p. P.F. Ahern (London) Ltd* [1998] Env. L.R. 189 (at p.196). However, Lindblom LJ could not accept that argument. In his view, the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.

**I would simply add the observation that a**

## **prior approval application is not a necessary pre-requisite to establishing a fall-back position, because planning permission is granted in any event by Article 3(1) of the GPDO.**

**GPDO.** In granting prior approval an LPA is not even approving the permitted development as such, but only those matters that specifically require their attention. On the other hand, a prior approval application would clearly be positive evidence of an intention to develop, and would certainly put the fall-back position beyond doubt.

### **‘Planning gain’ advantages**

In this case, however, there was other evidence that entitled the LPA to conclude that there was **a realistic prospect that the PD rights would be exercised if planning permission was not granted for the alternative development that was now proposed, and so a fall-back position had clearly been established.**]

The remaining issue was the presumption in favour of “sustainable development”, as interpreted by paragraph 14 of the NPPF. The decision of the Court of Appeal in *Barwood Strategic Land LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893 provides the answer (and supersedes all previous judgments on this issue). The “presumption in favour of sustainable development” did not apply to the proposal in this case, and the council’s officer did not advise the committee that it did. The instant case was clearly and materially different from *Barwood*, and the officer’s report had correctly advised on the application of the NPPF as a material consideration in the determination of this application.

The Court of Appeal unanimously upheld Garnham J’s judgment at first instance and dismissed the claimant’s appeal.

(\*) Extracts below from one such appeal decision ([full appeal decision at APPENDIX 1](#)) relating to permission for prior approval barn conversions and the allowing of a new build dwelling in the alternative.

## Appeal Decision

Site visit made on 21 December 2015

by **Rachel Walmsley BSc MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **10 February 2016**

**Appeal Ref: APP/R3650/W/15/3133244**

**Garden Cottage Farm, Shillinglee Park Road, Chiddingfold, Godalming GU8 4TA**

### **Decision**

1. *The appeal is allowed and planning permission is granted for the removal of existing agricultural buildings granted consent for conversion to 3 dwellings under PRA/2014/0004 and the erection of a single dwelling house at Garden Cottage Farm, Shillinglee Park Road, Chiddingfold, Godalming, GU8 4TA in accordance with the terms of the application, Ref WA/2015/1193, dated 11 June 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule of conditions.*

### **Preliminary matter**

2. *On 6 October 2014 the Council granted approval for the conversion of the existing agricultural buildings on the appeal site to 3 dwellings. The same agricultural buildings are the subject of the current appeal. As such, both parties are agreed that the prior approval represents a fall-back position which is a relevant material consideration within this appeal. Whilst there appears to be a dispute as to whether or not the approval has been implemented, the Council accepts that the approval is extant so this dispute is of no consequence. I accept that this is a material consideration which I shall take into account during my determination.*

## **Main Issues**

3. The main issues raised by this appeal are:

- (i) whether the dwelling would be in an acceptable location;
- (ii) the effect of the dwelling on the character and appearance of the surrounding area; and
- (iii) the impact of the dwelling on the biodiversity of the area.

## **Reasons**

### *Location of proposed development*

4. The appeal site concerns an area of land with agricultural barns on it and with its own access from Shillinglee Park Road. The site is within a rural area, surrounded by woodland and open land, with a farmhouse and outbuildings directly south of the site. Given the location of the site, surrounded by open land and woodland and some distance from an existing town, village or other settlement, I have no doubt that the site is within the open countryside.

6. In light of the Council not having a 5 year supply of deliverable housing sites, I am required to give weight to the National Planning Policy Framework (the Framework); paragraph 49 of the Framework states that 'housing applications should be considered in the context of the presumption in favour of sustainable development' and 'relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'

7. Whilst, therefore, I find that the proposed development would be contrary to policy C2 in principle, I can afford limited weight to this policy in light of the Council not having a 5 year supply of deliverable housing sites.

8. Turning to the Framework, paragraph 55 promotes development within rural areas provided it will enhance or maintain the vitality of rural communities. The site is not close to an existing town, village or other settlement and therefore the development could not be considered to support services and facilities. I therefore find the proposal contrary to the Framework.

9. Notwithstanding my findings above, there is an extant planning permission for 3 dwellings on the site in the same location as the appeal proposal **and this carries significant weight in my determination.** If the appeal proposal succeeds and the permission is implemented, the fallback position could not be implemented and the

appeal proposal would result in one dwelling in an unacceptable location as against a fallback position whereby three dwellings could be built. There is nothing before me to suggest that the fallback position would not be implemented if this appeal fails.

10. Therefore, whilst the site is within an unacceptable location, **given the existence of a realistic fallback position, I conclude that it would not be appropriate to withhold planning permission for the appeal proposal on the basis of its location.**

*Character and appearance*

11. The site concerns an area of land which currently has agricultural barns on it and is accessed via a gate from Shillinglee Park Road. The three agricultural barns vary in size and respond to the change in levels on the site, the third barn is set on ground lower than the other two. The remainder of the site is a combination of hardstanding and natural grass.

15. The areas where the building could be read as a two storey building would be from within the site itself, and from the adjoining paddock and associated footpath. The two storey element would be seen against a backdrop of large mature trees, and in much longer distance views, alongside the existing two storey farmhouse. **Furthermore, the appellant has demonstrated that the scale and height of the proposal would not be dissimilar to the scale and height of the existing agricultural barns.**

**16. There are currently three barns on the site which occupy a large proportion of the site. The proposal would correspond closely to the footprint of two of the three barns;** the third would be removed. In doing so, the proposal would reduce the footprint of the built development on the site, freeing up space for open space and landscaping. Consequently it is likely that more of the site would be in its natural state, corresponding more closely to its surroundings.

**19. I have concluded that the design would be acceptable and would be readily assimilated into the rural setting. As such I conclude that it would not be harmful to the character and appearance of the area and would accord with the development plan objectives listed above and with national planning objectives designed to improve the quality of an area.**

**21. In occupying a similar footprint to the existing buildings, the appellant confirms that no digging into virgin ground would be necessary. I have no reason to disagree.**

**22. Given that the proposed building would occupy a similar position to the existing agricultural barn I have no reason to believe that the development would be an unreasonable distance to the trees to have a detrimental impact.**

**COMMENT** – In addition, the proposal compares very favourably against the main National Planning Policy Framework (NPPF) policies 89 and 111 (below) against which the application is to be assessed.

89. *A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:*

- *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

**111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.**

### Planning considerations

Built footprint along with bulk are accepted as the main tests with respect to rural / Green Belt appropriateness. **The proposed development in comparison to the dwelling fallback permission scores more favourably against both criterion.** The proposal represents a sympathetic alternative development of a new build house in a situation, by remaining within the confines of the existing developed yard, where it would not intrude into areas where there is currently any greater undeveloped feel to the context.

Very special circumstances:

- The realistic fallback position for residential development confirming the previously developed nature of the application site
- The high quality design of the proposed development, which would be a significant improvement over the existing built form on the site and delivering an attractive residential development of traditional character suitable for the sites rural location
- The pro rata replacement of built footprint and reduction in concrete hardstanding ensuring a neutral / enhanced effect on the openness of the countryside
- Being away from the tree canopy so as not to impinge on root protection zones
- Visual improvements to the context and proposed street scene
- A real need for more market housing in the District
- More rationalised and attractive parking arrangement

The fact that as a result of the Dartford Borough Council v The Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 141 (14 March 2017) judgement the site cannot be considered to be isolated.

### **Design context:**

The proposed residential development designs have been derived with particular design cues taken from the surrounding area so as to create a balanced range of dwelling sizes both in terms of the built form and the plot size/amenity areas.

### **Design content**

In-depth dialogue with the clients, the architect and myself has culminated in a proposed development that will enhance the built form together with improving the existing context whilst enabling further practical dwelling accommodation **which would optimise the efficient use of the land whilst enhancing the openness of the countryside.**



Above and below – Proposed new build dwelling plans



**The residential redevelopment is being advanced to make the most efficient use of the land and will be laid out to provide separate amenity areas and respect privacy to adjoining properties. The redevelopment is proposed to improve and enhance the character of the area, together with providing enhance outlook and amenity, with a better built form that complements**

and respects the site rural environment whilst optimising a valuable previously developed site as advocated in the National Planning Policy Framework, for better quality residential purposes.

With regards to the proposal the demolition of the existing buildings and cessation of commercial agricultural activity **provides the opportunity to provide for better quality built form** that will enhance the character and appearance of the countryside in the locale of the application site. This along with the proposed landscaped context will ensure that it does not appear overbearing or dominant in views of the site from the surroundings.

There will be a material enhancement to the visual perception of the form of the buildings on the site from public vantage points. In this respect the proposals will at improve the character and appearance of the area.

**Building form within the area is extremely varied.** There is no fixed style within the areas around the site with properties taking many different forms and varied finishes. Materials used locally include facing brickwork, tile hanging and wooden boarding.

## Principal Design Considerations

The development site would be served by the existing accesses. The layout of the proposal has evolved around the retention and protection of landscape features within and adjacent to the site.

The mass of hard standing on the site and appearance of the existing buildings have a neutral to negative effect on the wider character of the area. Much of the site will be returned to soft landscaping with new tree and shrub planting throughout the proposed scheme. Due to the sensitive location of the site it is acknowledged that the finer details of this scheme will be very important and require further discussion. **The applicant is happy to work with the Council with regard to imposition of conditions in this regard.**

The residential development would benefit from a high quality living environment, with private gardens, allocated parking, a range of nearby local amenities and good public transport links.

**The design of the proposed new housing would be of a suitable style, mass and scale to fit in harmoniously with the surroundings.** Materials and appearance would be in keeping with the site and other properties within the locality.

The development would be sustainable and would deliver economic development and higher living standards both now and in the future while protecting the surrounding environment and enhancing the local area.

### Amount

**Residential development is proposed that pro rata would occupy a similar floor area and volume in comparison with the existing agricultural barn with its extant cladding and prior approval permissions.**

**The proposed residential development will remain sited within the existing historic developed yard area.**

The proposal has been laid out to provide separate amenity areas and maintain privacy between the proposed properties. The proposed development will similarly be constructed in high quality materials sympathetic to surrounding residential properties.

Driveways shall be gravelled with permeable paving for patio's and walkways. Garden boundaries will be delineated with post and rail fences and/or native hedges as appropriate.

The form of the development enhances the openness of the countryside and absorbs the development within the landscape. **The external appearance has been designed to respect the local vernacular. The proposed residential development would maintain and enhance the rural character of the area.** The development will be moderate in scale. It will respect the form, rural character and local style of building of its immediate setting and would not materially harm the character of the countryside.

### **Scale, and Layout**

The scale of the development has been designed to reflect the varied character of the area. The majority of buildings within the surrounding area are two storeys in height, this is reflected in the design of the proposal. The scale of the proposed buildings relate well with those in the surrounding area.

**Separation has been provided from adjacent dwellings and boundaries to ensure that buildings do not have an overpowering or harmful impact on amenities.** The massing of the scheme has been broken up with an effective placing of fenestration and stepping of the footprints creating visual balance and cohesiveness throughout the proposals.

The development has regard to and respects the scale, height and general proportions of other buildings within the surrounding area. A key feature of the area is the space which exists around the buildings within the area.

**The neighbouring properties will not be affected by the proposed development.** The proposed development will not cause overshadowing or overlooking. The proposed arrangement of accommodation and curtilage retains and offers high levels of privacy. Any anticipated associated use / enjoyment of land surrounding the building within the dwellings' proposed residential curtilage would not materially harm the character and amenities of the area and would not conflict with the openness of the countryside.

The NPPF advises that planning policies and decisions should aim to ensure that developments;

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;

- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- are visually attractive as a result of good architecture and appropriate landscaping.

As illustrated in the application drawings the design and layout would provide building forms and styles taking references from the local vernacular. The form of the development enhances the openness of the countryside and absorbs the development within the landscape.

The proposed residential development will create an **attractive cohesive development** which will provide a positive contribution to the area. The design of the accommodation has been created to make the most efficient use of the site. The proposal will allow flexible accommodation and assist in the provision of an additional dwellings thereby reinforcing this sustainable rural community.

In addition to the redevelopment of the site the areas of concrete surrounding the buildings will be broken up to create garden areas to the proposed development. The breaking up of the expanses of concrete and their replacement with garden and permeable surfacing will assist with rainwater run-off.

The proposed development respects and works with the existing context so as to enhance the traditional character, setting and integrity of this rural site. The proposed arrangement of accommodation and curtilage retains and offers high levels of privacy.

Any anticipated associated use / enjoyment of land surrounding the building within the dwellings' proposed residential curtilages would not materially harm the character and amenities of the area and would not conflict with the openness of the countryside. In accordance with Local plan Planning and Crime Prevention policies the design, layout and use of buildings and spaces about and between buildings take account of the opportunities to reduce the incidence of crime.

The amount of hard surfacing within the development has been kept to a minimum, providing the footpaths and parking zones, with gardens within the site to be soft landscaped.

### Density and mix of housing

The NPPF states that in order to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should plan for a mix of housing based on current and future demographic trends; identify the size, type,

tenure and range of housing that are required in particular locations, reflecting local demand.

The proposal compares very favourably against the main Local Plan policies against which the application is to be assessed.

### **Planning history and case law on fallback position:**

On the basis of the extant permission referred to above a **fallback position** is engaged.

The Development Control Practice Manual emphasises the fallback position point by confirming that, ***“Previous planning permissions are important material considerations to be applied in any decision making process. There is, of course, an important distinction to be made between those permissions that are still capable of implementation, and those that have expired. In South Oxfordshire v SOS & Flaherty Bros 1981 an expired permission was referred to as a “relevant consideration”, but not a “vitally material consideration” as the SOS had concluded. The term “vitally material consideration” had been used in Spackman v SOS 1977 with regard to an extant permission”.***

**Comment** - The recent conversion permission **would** be implemented in the alternative; as such the permission under **MO/2015/0811/PNQ** represents an extant permission and for the purposes of this application, **‘a vitally material consideration’**.

Further extracts from the The Development Control Practice Manual state:

#### **“6.351 Extant permissions**

***The existence of an extant planning permission relating to the site of a proposed development is a particularly important material consideration*** for two reasons. These are: a) natural justice – *It is not fair administration to allow one thing and then to turn round and deny something similar, b) that the development for which permission has been given could be implemented should any later proposal be refused”.*

**Comment** - There is a need to look at the proposal realistically and proportionately in respect of the context of the site. **As such there are material planning benefits arising from the proposal in contrast to the extant permission.**

**Central to the proposal is that in comparison with the extant permissions, the proposed new build dwelling in the alternative would maintain the openness of the countryside. Whilst the circumstances are peculiar they are considered to represent the very special circumstances, in this instance, such that the proposal can be supported.**

It is clear from planning case law that the weight that can be given to fallback position arguments as significant material considerations has notably increased in planning appeal reporting in the last couple of years, particularly where as in this scenario the proposed alternative development shares a common footprint with an extant permission.

The following case summary extract from the Development Control Practice Manual further emphasises the point we are making.

#### 4.1481 Fallback of existing planning permission

The following cases illustrate the fall back implications of existing planning permissions.

- A replacement dwelling in an AONB was proposed and an existing small cottage was to be retained as garaging and stabling. The local authority argued that the impression would be that there would be two dwellings on the site which was contrary to severely restrictive policies. It was argued that two **fallback** positions provided by a previous planning permission were material considerations. An inspector noted that planning permission already existed for a replacement dwelling at the appeal site, which included a separate double garage on the site of the cottage. This was a material consideration giving strong support to the proposal as it provided two **fallback** positions. The first of these was that the replacement house could be erected, but not the double garage. Provided that the remainder of the proposal was carried out completely in accordance with the approved drawings the cottage could remain, there being no condition requiring its demolition. **The second position was that the previous permission could be implemented in full. The appeal scheme was to be preferred to either of these two alternatives in terms of impact on AONB character, see South Shropshire 16/10/1997 DCS No [033-180-863](#).**

#### Planning context to Proposed Development:

It is common ground that the existing development meets the definition for previously developed land below from the National Planning Policy Framework Glossary.

**“Previously developed land:** Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. *This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time”.*

The provision of housing will assist in addressing the Council's housing land supply requirements. The National Planning Policy Framework, indicates that Councils need to work “to boost significantly the supply of housing”.

**The proposed development will contribute to meeting the need for new homes in the Council's administrative area and this is a material consideration to be weighed against the other considerations for this application.**

The proposed development will enable it to be better integrated into the rural setting of the site thereby improving the design relationship with existing residential dwellings.

It is advanced that the proposed development, together with the reduction in associated vehicular activity will have an enhanced and reduced impact on the openness of the countryside and the purpose of including land within it than the existing development.

It is acknowledged and welcomed that the Council's stance in respect of other recent redevelopment permissions within the District that the very special circumstances outlined within this statement would seem to be similarly acceptable in this regard.

## **General Housing Need.**

In terms of Housing need the proposed development will incrementally assist in reducing pressure for new Housing development on previously undeveloped land. The NPPF requires Councils to continue to identify a 5 year housing supply.

The additional residential development proposed, as well as improving the quality and range of existing accommodation, would help in a valuable way to provide housing that the Council needs to find. **This is considered to be an additional material consideration to which significant weight should be given in favour of permitting the proposed development.**

## **Use and Housing Need:**

In terms of Housing need it is clear that the proposed development will incrementally assist in reducing pressure for new Housing development on previously undeveloped land. **The NPPF requires Councils to continue to identify a 5 year housing supply.**

The residential development proposed, as well as improving the quality and range of existing accommodation, would help in a valuable way to provide housing that the Council needs to find. **This is considered to be an additional material consideration to which significant weight should be given in favour of permitting the proposed development.**

## **Key policy considerations:**

It is considered that the application will need to be assessed against the following policies. The proposed development suitably meets the requirements of each of the policies. The **traffic light highlighting** and bold type face throughout the Planning Statement emphasises the suitability of the proposal against the material planning considerations as part of the planning balance exercise.

**In terms of the need for an overall planning balance, particularly given the multitude of applicable considerations in this instance, it is respectfully and forcefully made out that the proposed development suitably meets and creates positive outcomes against the requirements of each of the policies.**

The NPPF promotes housing applications in the context of the presumption in favour of sustainable development.

## **National Planning Policy Framework (NPPF 2023)**

### **Decision-making**

38. Local planning authorities should approach decisions on proposed development **in a positive and creative way**. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

### **Making effective use of land**

123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, **in a way that makes as much use as possible of previously-developed or 'brownfield' land**.

124. Planning policies and decisions should:

- a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;
- b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;
- c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;
- d) **promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively** (for example converting space above shops, and

building on or above service yards, car parks, lock-ups and railway infrastructure); and

e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

125. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers.

NPPF supports the proposed development and makes it clear that, *"Local planning authorities may make an allowance for **windfall sites** in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens".*

### Achieving sustainable development

8. Achieving sustainable development means that the planning system has three overarching objectives, **which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):**

- a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising

waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

### **The presumption in favour of sustainable development**

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **decision-taking** this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

### **Delivering a sufficient supply of homes**

60. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

70. Small and medium sized sites **can make an important contribution to meeting the housing requirement of an area**, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

- a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;
- b) seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing;

- c) use tools such as area-wide design assessments, permission in principle and Local Development Orders to help bring small and medium sized sites forward;
- d) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and
- e) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

### **Rural housing**

83. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

84. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings **and enhance its immediate setting**;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality, in that it:
  - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
  - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

## **Achieving well-designed and beautiful places**

131. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

135. Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

139. In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

## **Interim statement on Climate Change / Sustainable House design**

### **Sustainability, Energy Efficiency and Renewable Energy**

In accordance with Local plan policy relating to Sustainable Construction, Renewable Energy and Energy Conservation the proposed residential development will minimise energy use through its design, layout and

orientation; maximise on-site recycling facilities and the re-use and recycling of materials used in construction and meet Level 4 of the Code for Sustainable Homes for housing / BREEAM 'Very Good' construction standards. The proposed development will include a 10% reduction in total carbon emissions through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources.

The proposed design embraces as many climate neutral principals as are possible given the existing/proposed positions and orientations of the buildings. Renewable energy sources will be incorporated within the new dwelling.

A ground source heat pump system is being considered; the heat pump would use embodied energy within the earth to pre-heat the heating system. There will also be under-floor heating which is an efficient, low energy way of providing heating and combines well with ground source heat pumps.

Rain water Harvesting is being considered - Rainwater from the roofs will be collected and stored for use in the garden areas. Water consumption will also be further reduced with the installation of dual flush cisterns and aerated taps.

Additional sustainability features of the development will include:

- Low levels of heat loss through the fabric of the building as a result of high insulation levels and air tightness performance
- Low energy heating and hot water systems
- Low energy lighting
- Excellent access to public transport and amenities
- Use of durable materials of low environmental impact and long life.

Materials Specification - The "Green Housing" specification guide - The choice of materials is intended to accord, wherever possible, with the Green Guide to housing specification with the use of an overall summary rating of A for the composition of the external walls, roof and glazing systems, etc in order to minimise environmental impact, the summary of the rating includes for longevity of material, recycled input, recycle ability, currently recycled and energy saved by recycling.

Insulation – The construction will be traditional brick and block with super-insulated blocks and high performance cavity wall insulation exceeding current Building Regulations standards. The roof structures will also be super-insulated in excess of current Building Regulations standards. It is intended to use natural insulation; Warmcell (re-cycled newspaper) or sheep's wool wherever possible.

Timber - All timber to be used is to be sourced from suppliers affiliated to certified schemes such as Forest Stewardship Council, Canadian Standards Association, Sustainable Forest Initiative etc.

Lighting - Use of compact fluorescent, low energy / LED lighting throughout the proposed development in particular within the circulation spaces with PIR detectors where appropriate to turn lights off automatically when not occupied.

Windows - The Windows will be installed with double glazed low E coated sealed units.

### **Access and parking:**

The proposals for the site utilise the existing access. The traffic generated will remain compatible with the environmental character of the area and can be accommodated adequately on the surrounding road network.

General Access Principles - The design should facilitate the use, access and mobility around the dwellings by all users including those with disabilities. The design should integrate with the existing road and footpath infrastructure to provide ease of movement within the local community infrastructure. The proposal should support convenient and safe travel for all users in a balanced manner. Adequate provision would be retained for access by emergency services.

Access to the dwellings will be via a flat path/driveway to the public highway and associated footpaths with disabled access being provided via the front or rear of the property. Where appropriate all principal entrances will be provided with a level access threshold to conform to Building Regulations Part M and will be well illuminated. Disabled users and older/less mobile users are amply catered for with the open-plan living areas and rear patio on what is essentially a level plot. Downstairs WC facilities will be provided for older people and/or those with disabilities.

The design features consistent floor levels to facilitate unhindered access and simple communal circulation areas to facilitate easy movement around the dwelling. The open-plan areas provide generous manoeuvrability for wheelchair users. The driveway to the rear of the dwelling is spacious with ample area for manoeuvring and parking adjacent to the dwelling. Adequate provision has been made for parking for occupants and visitors without detracting from the character of the immediate area. Wheelchair access comfortably exceeds LTH requirements. Internal doorway dimensions conform to or exceed LTH standards.

### **Landscaping:**

Existing hedging to the wider boundaries of the site is to be retained and enhanced where possible.

The proposed development will offer the opportunity to enhance soft landscaping as an integral part of the design with a **traditional, simple curtilages** with appropriate native landscaping sympathetic to the surrounding area. New soft landscaping to delineate the proposed garden curtilages would be native and complement existing planting in the area.

With regards to amenity space, the proposed dwellings will be provided with a commensurate area of private curtilage to be delineated with post and rail fences and/or hedges as appropriate. Hard landscaping within the site has been kept to a minimum, in the form of suitable surfacing for footpaths and parking. The proposals will return the site back to its rural setting and the removal of vast areas of hard standing which currently exist on the site will make it more in keeping with its surroundings.

In accordance with Local plan policies relating to Landscape design of new developments particular care will be taken in the provision, use and design of spaces between buildings and that the hard and soft landscape design is suitable for the site and form of development.

#### **Ecology considerations:**

**The applicant is happy to accept planning conditions that would enhance the habitat and ecological value / biodiversity of the site.**

#### **Flood Risk considerations:**

From the Environment Agency Flood Map it appears that the site is located **outside** any flood zone or area potentially subject to flooding.

### **Infrastructure:**

Adequate services and infrastructure already exist and public resources will not be required to improve services.

### **Conclusion:**

In terms of the need for an overall planning balance, **particularly given the multitude of applicable considerations in this instance**, it is respectfully and forcefully made out that the proposed development suitably meets and creates positive outcomes against the requirements of each of the policies.

**Central to the proposal is that in comparison with the extant permissions, the proposed new build dwellings in the alternative would maintain the openness of the countryside and are considered to represent the very special circumstances, in this instance, such that the proposal can be supported.**

It is clear from planning case law that the weight that can be given to fallback position arguments **as significant material considerations** has notably increased in planning appeal reporting in the last couple of years, **particularly where as in this scenario the proposed alternative development shares a similar footprint with an extant permission.**

The proposed buildings **to be demolished and rebuilt, within the existing developed yard area / over the existing built footprint, in the alternative to being converted** is not readily visible from public vantage points being screened by the adjoining mature boundary trees and hedging.

The advantages to the current proposal are as follows:

### **Very special circumstances:**

- The realistic fallback position for residential development confirming the previously developed nature of the application site
- The high quality design of the proposed development, which would be a significant improvement over the existing built form on the site and delivering an attractive residential development of traditional character suitable for the sites rural location

- The ‘pro rata’ replacement of built footprint and reduction in concrete hardstanding ensuring a neutral / enhanced effect on the openness of the countryside
- Visual improvements to the context and proposed street scene
- A real need for more market housing in the District
- More rationalised and attractive parking arrangement

The fact that as a result of the **Dartford Borough Council v The Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 141 (14 March 2017)** judgement the site cannot be considered to be isolated.

The proposed development has been given **detailed consideration** so that it will enhance and reflect its location both in context, scale and design and will not have a detrimental effect on the area. The proposal, together with the other elements of the scheme, **amount to significant improvements**.

The recent conversion permission **would** be implemented in the alternative; as such that permission represents an extant permission and for the purposes of this application, **‘a vitally material consideration’**.

The proposed use and the form, bulk and general design of the proposed development is in keeping with its surroundings. All works will be carried out in a manner appropriate to the character of the setting and have no adverse impact on its surroundings; the proposal will retain and enhance the intrinsic features and architectural integrity of the existing context.

Design considerations that are often an after-thought in the development process, have been considered from the outset. The use of space within the site has been designed to provide as much soft landscaping and usable amenity as possible whilst ensuring appropriate levels of parking and vehicle turning are available. The footprint of the proposed scheme is less than the existing structure on site to be demolished. The development density is wholly appropriate to the site and the amount of buildings on the site would balance the distinct areas around the site.

The scale, appearance and massing of the buildings would reflect and respect the character of the area. The buildings have been designed to integrate different styles as is seen locally. A traditional palette would finish the buildings.

As the application demonstrates, the proposal has evolved through a thorough appreciation of local character and the objective of adopted planning policies and guidance to positively shape new development.

**Thank you in advance of your balanced consideration of the proposed application.**

**Please maintain a dialogue with myself and the applicants if you have any questions, concerns or matters that require further elaboration.**

## APPENDIX 1

# Appeal Decision

Site visit made on 21 December 2015

**by Rachel Walmsley BSc MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **10 February 2016**

### **Decision**

1. The appeal is allowed and planning permission is granted for the removal of existing agricultural buildings granted consent for conversion to 3 dwellings under PRA/2014/0004 and the erection of a single dwelling house at Garden Cottage Farm, Shillinglee Park Road, Chiddingfold, Godalming, GU8 4TA in accordance with the terms of the application, Ref WA/2015/1193, dated 11 June 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule of conditions.

### **Preliminary matter**

2. **On 6 October 2014 the Council granted approval for the conversion of the existing agricultural buildings on the appeal site to 3 dwellings. The same agricultural buildings are the subject of the current appeal. As such, both parties are agreed that the prior approval represents a fall-back position which is a relevant material consideration within this appeal. Whilst there appears to be a dispute as to whether or not the approval has been implemented, the Council accepts that the approval is extant so this dispute is of no consequence. I accept that this is a material consideration which I shall take into account during my determination.**

### **Main Issues**

3. The main issues raised by this appeal are:

(i) whether the dwelling would be in an acceptable location;

- (ii) the effect of the dwelling on the character and appearance of the surrounding area; and
- (iii) the impact of the dwelling on the biodiversity of the area.

### **Reasons**

#### *Location of proposed development*

4. The appeal site concerns an area of land with agricultural barns on it and with its own access from Shillinglee Park Road. The site is within a rural area, surrounded by woodland and open land, with a farmhouse and outbuildings directly south of the site. Given the location of the site, surrounded by open land and woodland and some distance from an existing town, village or other settlement, I have no doubt that the site is within the open countryside.

5. Policy C2 of the Waverley Borough Local Plan 2002 (the Plan) strictly controls development in the open countryside and away from existing settlements but permits development in such a location provided it meets the relevant policies of the Plan and the given criteria. Policy RD7 concerns the re-use and adaptation of buildings in rural areas and permits such development provided certain requirements are met. It is not directly relevant here given that the proposal would result in the removal of the rural buildings.

6. In light of the Council not having a 5 year supply of deliverable housing sites, I am required to give weight to the National Planning Policy Framework (the Framework); paragraph 49 of the Framework states that 'housing applications should be considered in the context of the presumption in favour of sustainable development' and 'relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'

7. Whilst, therefore, I find that the proposed development would be contrary to policy C2 in principle, I can afford limited weight to this policy in light of the Council not having a 5 year supply of deliverable housing sites.

8. Turning to the Framework, paragraph 55 promotes development within rural areas provided it will enhance or maintain the vitality of rural communities. The site is not close to an existing town, village or other settlement and therefore the development could not be considered to support services and facilities. I therefore find the proposal contrary to the Framework.

9. Notwithstanding my findings above, there is an extant planning permission for 3 dwellings on the site in the same location as the appeal proposal **and this carries significant weight in my**

**determination.** If the appeal proposal succeeds and the permission is implemented, the fallback position could not be implemented and the appeal proposal would result in one dwelling in an unacceptable location as against a fallback position whereby three dwellings could be built. There is nothing before me to suggest that the fallback position would not be implemented if this appeal fails.

10. Therefore, whilst the site is within an unacceptable location, **given the existence of a realistic fallback position, I conclude that it would not be appropriate to withhold planning permission for the appeal proposal on the basis of its location.**

*Character and appearance*

11. The site concerns an area of land which currently has agricultural barns on it and is accessed via a gate from Shillinglee Park Road. The three agricultural barns vary in size and respond to the change in levels on the site, the third barn is set on ground lower than the other two. The remainder of the site is a combination of hardstanding and natural grass.

12. The site has a rural character. Shillinglee Park Road supports mature trees and hedges and accessed off the road are a number of moderately scaled developments including individual domestic properties and small clusters of outbuildings, nestled within fields and woodland. The site adjoins ancient woodland, as well as a paddock and other outbuildings. The other outbuildings adjoin the appeal site but overlook the main farmhouse and its associated grounds, which are further south.

13. Policy C3 of the Plan, refers to Areas of Great Landscape Value (AGLV), which includes the appeal site. This policy seeks to protect the distinctiveness of such areas. Policies D1 and D4 of the Plan follow in a similar vein; seeking to avoid development that would harm the visual character and distinctiveness of a locality and that would be inappropriate on matters such as design and scale.

14. The proposal would vary between one and two storeys in height. The building immediately opposite the entrance to the site would be single storey, corresponding to the single storey outbuildings nearby. In using the change in levels across the site, the two storey element of the proposal would not extend above the single storey building. In taking

advantage of the change in levels, much of the bulk and mass of the building would be concealed from outside the site. Consequently, when viewed from the entrance and from public footpaths within the adjacent woodland, the proposal would read as a single storey building. This would be in-keeping with the scale of the adjoining single storey outbuildings and would ensure that the proposal remained subservient to its surroundings.

15. The areas where the building could be read as a two storey building would be from within the site itself, and from the adjoining paddock and associated footpath. The two storey element would be seen against a backdrop of large mature trees, and in much longer distance views, alongside the existing two storey farmhouse. Furthermore, the appellant has demonstrated that the scale and height of the proposal would not be dissimilar to the scale and height of the existing agricultural barns.

16. There are currently three barns on the site which occupy a large proportion of the site. The proposal would correspond closely to the footprint of two of the three barns; the third would be removed. In doing so, the proposal would reduce the footprint of the built development on the site, freeing up space for open space and landscaping. Consequently it is likely that more of the site would be in its natural state, corresponding more closely to its surroundings.

17. With the exception of a glass link and a contemporary two storey element, the proposal would constitute larch clad and oak framed buildings. This would respond to the rural character of the site and its natural surroundings. The more contemporary elements of the building would be enclosed by the larch clad and oak framed buildings and therefore would be obscured from views around.

18. I have no doubt that the proposed development would change the character of the site; a residential use and the activities associated with it would create a more permanent use. The design of the proposal, however, would use the change in levels across the site to ensure that the proposal remained subservient to its surroundings. The design and scale of the buildings have been found to be in-keeping and the trees and mature planting would continue to give character to the local area, as would the open paddock. As such, I have no reason to consider that unreasonable harm would be caused to the character of the site or the surrounding area as an Area of Great Landscape Value.

**19. I have concluded that the design would be acceptable and would be readily assimilated into the rural setting. As such I conclude that it would not be harmful to the character and appearance of the area and would accord with the development plan objectives listed above and with national planning**

**objectives designed to improve the quality of an area.**

*Biodiversity*

20. Policy D4 of the Plan seeks development which has regard to existing features on site, including trees and policy D5 seeks to avoid any material harm to protected plants and their habitat. Currently the branches from the mature deciduous trees in the adjoining woodland overhang the existing agricultural barns. In occupying a similar height and footprint to the existing agricultural barns, it is likely that some lopping and topping of the trees would be necessary in order to carry out the site works. Indeed the appellant confirms that some crown lifting may be required. It would be possible to secure any planning permission with a condition to ensure that any works to the trees was carried out in a way that avoided damage to the trees. I do not consider that some lopping and topping of the trees, carried out in accordance with an agreed arboricultural method statement, would cause material harm to the trees or the ancient woodland overall.

**21. In occupying a similar footprint to the existing buildings, the appellant confirms that no digging into virgin ground would be necessary. I have no reason to disagree.** It is likely, however, that the roots to the trees extend beyond the woodland and into the site. The appellant notes that specialist piled foundations would be required given the proximity of the trees to the proposed development. It would be possible to secure any planning permission with a condition to ensure that the appropriate precautions are taken during construction and that appropriate foundations are built to ensure that long term damage is not caused to the tree roots and therefore the trees.

**22. Given that the proposed building would occupy a similar position to the existing agricultural barn I have no reason to believe that the development would be an unreasonable distance to the trees to have a detrimental impact.**

Furthermore, with appropriate measures put in place to protect the trees and their roots during construction, I am satisfied that the proposal would not result in the loss of, or damage to, the trees. Nevertheless, in the absence of a detailed tree survey and detailed drawings showing the existing and proposed relationship between the buildings, the retaining wall and the trees, I consider that it would be necessary to secure any planning permission with a condition that requires a detailed survey of all relevant trees so that sufficient protection could be afforded to the trees, during and after construction.

23. On this basis I am confident that the proposal could be realised without causing material harm to the ancient woodland or resulting in the loss of trees and therefore I consider that the proposal would comply with policies D4, D5 and D7 of the Plan.

### **Conclusion**

24. I have found that the proposed development would be in an unacceptable location, contrary to development plan and national policies which seek to restrict new residential development in the open countryside. Nevertheless, the extant permission would result in the introduction of three additional dwellings into the open countryside.

**In light of this fall-back position, the location of the proposal is not sufficient reason to justify dismissal of the appeal. Furthermore, the proposal would be appropriate in design and scale and would not have a detrimental impact on the character of the site or its surroundings.** There would also be no loss of, or damage to, existing trees.

25. In all, in having regard to the fall-back position I find that the proposed development is acceptable. The appeal is allowed.

### **Conditions**

26. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Policy Practice Guidance and the Town and Country Planning (Development Management Procedure) (England) Order 2015. As a result I have amended some of them for clarity and eliminated others to avoid duplication.

27. In addition to the standard time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans for the avoidance of doubt and in the interests of proper planning.

28. I have imposed a condition requiring the submission and approval of hard and soft landscape works, samples of materials and finished ground floor levels in order to safeguard the character and appearance of the proposed development and immediate area. For the same reasons I have also included a condition limiting alterations to the dwellinghouse or the construction of outbuildings unless previously approved by the local planning authority.

29. I attach a condition regarding the hours for demolition or construction to avoid noise and disturbance to the neighbour's at unreasonable times of the day or week. In the interests of protecting the existing trees and in the absence of a tree survey I have included a condition requiring a tree survey, as well as a condition seeking the submission and approval of an arboricultural method statement. To ensure that appropriate provisions are provided on the site for drainage and communications infrastructure, a

*condition has been included accordingly, requiring the submission and approval of such details.*

*R Walmsley*

*INSPECTOR*

**CONDITIONS SCHEDULE**

- 1) *The development hereby permitted shall begin not later than 3 years from the date of this decision*
- 2) *The development hereby permitted shall be carried out in accordance with the following approved plans 9998.L, EX01, EX02, existing and proposed site plan & building A02, A03, A04, A05, dated 10<sup>th</sup> June 2015 and proposed building presentation A01, A02, A03, A04, A05, A06, A07, dated 10<sup>th</sup> June 2015.*
- 3) *No development shall commence until 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 boundary treatments; hard surfacing materials (including sub-base and depth of construction); planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species; plant supply sizes and proposed numbers/densities where appropriate and an implementation programme. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied, in accordance with the agreed implementation programme. Any trees or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.*
- 4) *Development shall not commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.*
- 5) *Development shall not take place until detailed plans and sections of the finished ground floor levels of the proposed building, above ordnance datum and in relation to existing ground levels across the site and relative to adjoining land, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.*
- 6) *Demolition or construction works shall take place only between 08.00-18.00 on Monday to Friday, 08.00-13.00 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.*
- 7) *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement of the dwellinghouse and no erection of outbuildings shall be constructed without the written permission of the Local Planning Authority.*
- 8) *No site clearance, preparatory work or development shall take place until a tree survey has been submitted to and approved by the local*

*planning authority. The tree survey shall include (a) a plan showing the position of every tree on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be removed;*

*(b) a schedule in relation to every tree identified, listing information as specified in paragraph 4.4.2.5 of British Standard BS 5837: trees in relation to design, demolition and construction-recommendations (or in an equivalent British Standard if replaced) and any proposed pruning, felling or other work in relation to every existing tree identified to be retained on the plan referred to; (c) details of any proposed alterations to existing ground levels and the position of any proposed excavation that might affect the root protection area, to include foundation design and retaining wall details; (d) all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837, or in an equivalent British Standard if replaced); and (e) areas of existing landscaping to be protected from construction operations and the method of protection. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.*

*9) No site clearance, preparatory work or development shall take place until an arboricultural method statement (in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: trees in relation to design, demolition and construction - recommendations, or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The arboricultural method statement shall be carried out as approved.*

*10) No development shall commence until details of existing and proposed functional services above and below ground (eg drainage, power, communications cables, pipelines etc, indicating alignments, levels, access points and supports as relevant, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.*